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BEFORE THE WASHINGTON UTILITIES
AND TRANSPORTATION COMMISSION

WASTE CONNECTIONS OF
WASHINGTON, INC.,

Complainant,

v.

ENVIRO/CON & TRUCKING, INC. a
Washington corporation; ENVIROCON, INC., a
corporation; and WASTE MANAGEMENT
DISPOSAL SERVICES OF OREGON, INC.,

Respondents.

Case No. TG-071194

WASTE MANAGEMENT'S AND
ENVIRO/CON TRUCKING'S
MOTION FOR SUMMARY
DETERMINATION

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1 **I. MOTION FOR SUMMARY DETERMINATION**

2 **A. RELIEF REQUESTED**

3 1. Respondents Waste Management Disposal Services of Oregon, Inc. (“Waste
4 Management”) and Enviro/Con Trucking, Inc. (“ECTI”) move for summary dismissal of this
5 action because it is moot and no longer presents a justiciable controversy. This case is about a
6 specific job at a specific location involving specific services that have been completed. Because
7 the issues presented are purely academic and the Washington Utilities and Transportation
8 Commission (the “Commission”) cannot provide effective relief, the case should be dismissed.

9 **B. STATEMENT OF FACTS**

10 2. On June 8, 2007, Complainant Waste Connections of Washington, Inc. (“Waste
11 Connections”) filed a Complaint and, Alternatively, Petition for Declaratory Order, and
12 Application for Brief Adjudicative Proceeding (“Complaint”). Waste Connections alleged that
13 ECTI had collected and transported construction debris and/or construction waste (“C & D
14 Waste”) from the Evergreen Aluminum Smelter environmental remediation site (the
15 “Remediation Site”) in Clark County. (Compl. ¶ 5.) Further, Waste Connections contended that
16 ECTI and Waste Management had assumed overall responsibility for the transportation and
17 disposal of C & D waste from the Remediation Site. (*Id.* ¶ 6.)

18 3. In its request for relief, Waste Connections asked that the Commission either
19 order Waste Management and ECTI to cease and desist “from engaging in the collection and/or
20 transportation of [C & D Waste] located at the Evergreen Aluminum remediation site in
21 unincorporated Clark County,” or order that the collection of C & D Waste “from the Evergreen
22 Aluminum site in Clark County” is subject to RCW 81.77.040 and WAC 480-70-081 and
23 requires a certificate of public convenience and necessity. (Compl. ¶¶ 11, 13.)

24 4. The Remediation Site consisted of a defunct aluminum smelter and fabrication
25 plants. (McNeill Decl., Ex. 1.) It is contaminated with polynuclear aromatic hydrocarbons,
26 polychlorinated biphenyls, petroleum hydrocarbons, cyanide, fluoride and metals. (*Id.*) These
27 contaminants exceed the levels set forth in the Washington Model Toxics Control Act, Ch.

1 70.105D RCW (“MTCA”), the statute governing environmental cleanups. (*Id.*) The
2 Remediation Site is the subject of a hazardous waste cleanup under MTCA that is being directed
3 by the Department of Ecology. (*Id.*)

4 5. The Remediation Site involved the cleanup of hazardous waste and materials
5 containing hazardous substances. The work at the Remediation Site also involved demolition of
6 the aluminum smelter facilities to access contamination and prepare it for sale to the Port of
7 Vancouver. (*Id.*, Ex. 2.) Less than ten percent of the waste generated at the Remediation Site
8 was C & D Waste. (Tyacke Decl. ¶ 3.)

9 6. All the facilities at the site have been demolished with the exception of three
10 remaining structures: the scalehouse and guardhouse (which are to remain on the property for
11 the subsequent owner), and a steel-sided equipment storage structure (which is to be recycled).
12 (*Id.* ¶ 4.) Work involving collection and/or transportation of C & D Waste by Respondents is
13 completed. (*Id.* ¶ 5.)

14 **C. STATEMENT OF ISSUES**

15 7. Should the Commission dismiss the Complaint where the issues raised are now
16 moot?

17 **D. EVIDENCE RELIED UPON**

18 8. Waste Management and ECTI rely on the Complaint and the Declarations of Troy
19 L. Tyacke and Polly L. McNeill filed herewith.

20 **E. ARGUMENT**

21 9. A case is moot if the issues presented are purely academic and the adjudicative
22 body can no longer provide effective relief. *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692
23 P.2d 793 (1984); *State v. Turner*, 98 Wn.2d 731, 733, 658 P.2d 658 (1983). The Commission
24 recognizes and applies this judicial principle. For example, in *Glick v. Verizon Northwest, Inc.*,
25 2005 WL 484651 (W.U.T.C. Jan. 28, 2005) (Docket No. UT-040535, Order No. 3), the
26 complainant requested an order requiring a telephone company to provide the complainant with
27 prospective call detail as required by the tariff. Because the complainant had discontinued

1 service for the phone line for which he requested the itemization, the Commission dismissed the
2 request as moot.¹

3 10. Waste Connections has presented a narrow request for relief that is now moot. It
4 asks the Commission to order Waste Management and ECTI to cease collecting and/or
5 transporting C & D Waste from the Remediation Site. (Compl. ¶ 13.) However, even if Waste
6 Connections were to prevail on its claim, Waste Management and ECTI have ceased collecting
7 and/or transporting C & D Waste from the Remediation Site and the requested order would serve
8 no purpose. (Tyacke Decl. ¶ 5.) Alternatively, Waste Connections asks the Commission to
9 order that collection of C & D Waste from the Evergreen Aluminum Smelter Remediation Site in
10 Clark County is subject to RCW 81.77.040 and WAC 480-70-081 and requires a certificate of
11 public convenience and necessity. (Compl. ¶ 13.) Because the services challenged in this action
12 have been completed, the requested order presents a purely academic issue that is not tied to any
13 effective request for relief by Waste Connections. The parties do not have a disputed issue, and
14 therefore “an administrative hearing would be pointless within the APA context.” *Lawrence v.*
15 *Department of Health*, 133 Wn. App. 665, 678, 138 P.3d 124 (2006).

16 11. For similar reasons, this is no longer a justiciable controversy. Such a
17 controversy requires:

18 (1) an actual, present and existing dispute, or the mature seeds of
19 one, as distinguished from a possible, dormant, hypothetical,
20 speculative, or moot disagreement, (2) between parties having
21 genuine and opposing interests, (3) which involves interests that
22 must be direct and substantial, rather than potential, theoretical,
23 abstract or academic, and (4) a judicial determination of which will
24 be final and conclusive. Inherent in these four requirements are the
25 traditional limiting doctrines of standing, mootness, and ripeness,
26 as well as the federal case-or-controversy requirement.

23 *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001) (quotation marks,
24 citations, and ellipsis omitted). Now that the collection and transportation of C & D Waste that
25 has been challenged by Waste Connections has been completed, there is no existing dispute
26

27 ¹ For the Commission’s convenience, a copy of the referenced order is attached hereto as Attachment A.


1 between these parties to be adjudicated by the Commission and therefore the case should be
2 dismissed.

3 **II. CONCLUSION**

4 12. Waste Management and ECTI respectfully request that this action be dismissed as
5 moot and nonjusticiable, with each party bearing its own costs and fees.

6 DATED this 3rd day of March, 2008.

7 SUMMIT LAW GROUP PLLC

8 

9

Polly L. McNeill, WSBA # 17437
10 Jessica L. Goldman, WSBA # 21856

11 Attorneys for Waste Management Disposal Services
12 of Oregon, Inc. and Enviro/Con & Trucking, Inc.

ATTACHMENT A

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

)	
JEFFREY D. GLICK, President,)	DOCKET NO. UT-040535
CONSIDER IT DONE,)	
)	ORDER NO. 03
Complainant,)	
)	
v.)	FINAL ORDER AFFIRMING IN
)	PART, MODIFYING IN PART,
VERIZON NORTHWEST INC.,)	INITIAL ORDER GRANTING
)	IN PART, VERIZON MOTION
Respondent.)	FOR SUMMARY
)	DETERMINATION
.....)	

1 **Synopsis.** *This order affirms with modification an initial order granting, in part, Verizon’s Motion for Summary Determination in a consumer complaint against it. The Commission modifies the result of the initial order to recognize that customer claims upon tariffs are subject to the two-year limitation provided in RCW 4.16.160.*

2 **Nature Of Proceeding.** This proceeding is brought on by a formal complaint filed with the Commission on March 22, 2004, alleging that Verizon Northwest Inc. (Verizon or the Company) violated WAC 480-120-165(2) relating to customer complaints, by failing to escalate his complaint to higher management levels, and WAC 480-120-161(7)(b), concerning the form of bills, by failing to itemize charges for enhanced call-forwarding. The complaint sought an order assessing administrative penalties as appropriate under WAC 480-120-019, RCW 80.04.380, and RCW 80.04.405, and sought compensation under Verizon’s tariff, WN U-17.

3 In July 2004 Verizon filed a Motion for Summary Determination (Verizon Motion). Mr. Glick responded and Verizon replied, presenting a Declaration of Stanley P. Tate.

- 4 **Initial Order.** Administrative Law Judge Ann Rendahl entered an order on August 6, 2004, proposing to grant, in part, Verizon's Motion for Summary Determination, dismissing the claims relating to compensation and violation of customer complaint rules, and the request for an Order to Show Cause. The Initial Order proposed to find Verizon in violation of WAC 480-120-161(7)(b) and related tariff provisions, for failing to provide itemized billing, and proposed approval of the parties' resolution of that claim.
- 5 **Administrative review.** The Complainant seeks administrative review, contending that the initial order erred in granting summary determination. Respondent answers, supporting the result of the initial order on the points challenged by Complainant. Verizon also seeks administrative review, arguing that the initial order should be modified to provide that statutes of limitation set out in Chapter 4.16 RCW do apply to bar claims before the Commission when no specific limitation period for those claims is otherwise set by statute.
- 6 **Commission decision.** The Commission affirms the result of initial order, but modifies the initial order to rule that a consumer complaint upon the tariff of a regulated utility company is subject to the two-year limitation provided in RCW 4.16.160 when no other, specific statutory limitation applies.
- 7 **Appearances.** Jeffrey D. Glick, President, Consider It Done, Ltd., Bellevue, Washington, represents the Complainant. Timothy J. O'Connell and John H. Ridge, attorneys, Stoel Rives LLP, Seattle, Washington, represent Verizon.

I. MEMORANDUM

A. Introduction.

8 This matter involves a consumer complaint by Jeffrey D. Glick against Verizon Northwest, Inc. ("Verizon" in this order). Mr. Glick was a consumer of Verizon telecommunications services. His complaint alleges that Verizon's voice mail failed to work adequately, that Verizon improperly limited his rights to supervisory review of his complaint and to voice complaints orally to the company, and that Verizon improperly failed to provide an itemization for charges billed by the minute.

9 The ALJ entered an initial order on August 6, 2004, resolving the issues in the complaint against the complainant. Mr. Glick seeks administrative review of the order pursuant to RCW 34.05.464. Verizon responds, supporting the initial order in most regards but asking that the Commission reverse the initial order on the issue of the applicability of limitation periods in Chapter 4.16 RCW to claims before the Commission to which no other, specific limitation period applies.

10 Mr. Glick moved to strike Verizon's answer to his petition for administrative review. We will first address the motion to strike the answer, and then discuss the issues raised by the parties about the result of the initial order.

B. Mr. Glick's motion to strike Verizon's answer to the petition for administrative review.

11 Verizon was represented from the outset of this proceeding by the firm of Stoel Rives through attorney Timothy J. O'Connell. Verizon requested an extension of the time to file an answer to Mr. Glick's petition for administrative review in a letter signed by John Ridge, a colleague of Mr. O'Connell in the same firm, and the request was granted. Verizon later answered the petition for administrative

review; Mr. Ridge later filed a Notice of Appearance. Mr. Glick moved to strike the answer on the basis that Mr. Ridge had not filed a notice of appearance at the time he filed the request for an extension of time, citing CR 71(d).¹ Mr. Glick contended that because the request for a continuance was improperly filed, the answer was late and should be stricken.

12 Verizon responds that when the Company requested an extension of time, a notice of appearance was not required inasmuch as the Company was represented by the firm, in the person of Mr. O'Connell,² and that Mr. Ridge merely acted on behalf of the representing firm and there was no change in the representation. Verizon concludes that there was no need for a notice of appearance, a notice of withdrawal, or a notice of substitution of counsel.

13 We reject Mr. Glick's motion to strike the answer. This issue is governed by WAC 480-07-345(2).³ The Commission's rule, parallel with the court rule, also requires notices of appearance and withdrawal when there is a substitution of counsel.

¹ CR 71(d) reads as follows:

d) Withdrawal and Substitution. Except as provided in section (b), an attorney may withdraw if a new attorney is substituted by filing and serving a Notice of Withdrawal and Substitution. The notice shall include a statement of the date on which the withdrawal and substitution are effective and shall include the name, address, Washington State Bar Association membership number, and signature of the withdrawing attorney and the substituted attorney. If an attorney changes firms or offices, but another attorney in the previous firm or office will become counsel of record, a Notice of Withdrawal and Substitution shall nevertheless be filed.

² Verizon cites *Magoon v. Lort-Young Engineering Co., Ltd.*, 22 Haw. 245, 1914 W.L. 1714 (Haw. Terr., at *1).

³ WAC 480-07-345 Appearance and practice before the commission. *** (2) Written notice of appearance and withdrawal by counsel or other representative is required. *** Later changes to the designation of authorized representative must be made by written notice to the commission, and a copy must be served on each other party in the proceeding. ***

14 It is clear that here, there was no withdrawal and no substitution of counsel. Mr. O'Connell remained the attorney of record for Verizon. A principal purpose of a notice of appearance is to ensure for the benefit of both the attorney and the client, as well as the Commission, that the Commission communicates with the attorney who has the professional obligation to represent the client. Nothing in the request for a continuance changed the status of the representation nor the obligations of Mr. O'Connell. When requesting the continuance, Mr. Ridge was acting within the client's grant of authority to the firm, delegated by Mr. O'Connell, and the filing was proper. Mr. Glick's motion is denied.

C. Review of the Initial Order.

1. The Complaint.

15 The Complaint seeks compensation for the total cost of the Complainant's local exchange service for two business lines from November 4, 1999, through September 25, 2001. The Complaint alleges violations of rule and tariff by Verizon relating to customer complaints; it asks for an itemized statement of call-forwarding charges, and it requests that the Commission assess administrative penalties for the alleged violations. The Complaint also asks that the Commission enter orders directing Verizon to comply with the Complainant's request for an itemized statement and to cease and desist from efforts to limit the means by which the Complainant may communicate with the Company. Finally, the Complaint asks that the Commission order Verizon to reimburse the Complainant for the copying and mailing costs of the Complaint.

16 Verizon moved for summary determination, accepting the facts as stated in the Complaint, including its attachments, for purposes of its motion.

2. Motion for Summary Determination.

17 Verizon moved for summary determination that statutes of limitation bar the Complainant's claims or that Verizon is entitled to judgment as a matter of law. Under WAC 480-07-380(2)(a), summary determination is appropriate

if the pleadings . . . together with any properly admissible evidentiary support . . . show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Verizon accepts the facts as stated in the Complaint for purposes of its motion, and no facts are in dispute.

3. The initial order.

18 The initial order addressed each of the allegations and requests for relief in the complaint in reviewing the motion for summary determination. The order dismissed claims relating to compensation, violation of customer complaint rules, and for an Order to Show Cause. The order found Verizon in violation of WAC 480-120-161(7)(b) and related tariff provisions relating to itemization on its bills, and approved the parties' resolution of the claim relating to itemization.

4. Petition for Administrative Review.

19 This order will address each of the challenged rulings of the initial order. We will consider the text and the findings and conclusions of the order, the record, the arguments made in the petition for administrative review, and the parties' pleadings.

a. Claim for compensation.

20 Mr. Glick ordered a call-forwarding feature when he initiated a telephone line for his business, Consider It Done, an errand and pet-sitting business. He wanted this service to forward calls to his voice mail when he was unable to speak with the caller. Eventually, he learned that the service could not forward multiple contemporaneous calls. If the line were occupied with one forwarded call, a subsequent caller would hear "endless rings" and would not reach voice mail.

21 Verizon offered a refund in the amount of the call-forwarding service, \$1.50 per month, for a total of \$32. Mr. Glick asked for compensation for an alleged overpayment for service in the amount of the total price of his business service, citing Verizon's Tariff WN U-17, Sec. 2, 2nd revised sheet 29.⁴ Mr. Glick failed to file his complaint until about two and one-half years after the events complained of. Verizon alleged that the claim was barred by the statute of limitations for unreasonable charges, set out in RCW 80.04.220, which has a six-month limitation period, and asked that the claim be dismissed. Mr. Glick responded that the limitation period should be considered equitably tolled, because Commission Staff misled him about the need to file. Verizon answered that Mr. Glick did not pursue his claim diligently, in that he admitted in the agreed statement of facts that the delay in filing resulted from laziness.

⁴ The tariff reads in relevant part as follows:

7. Obligations of Company * * * e) Liability. The liability of the Company for damages arising out of mistakes, omissions, interruptions, delays, or errors, or defects in transmission occurring in the course of furnishing a service and not caused by the negligence of the customer shall, in no event, exceed an amount equivalent to the proportionate charge to the customer for the period of service during which such mistake, omission, interruption, delay, or error or defect in transmission occurs.

22 **Initial order.** The initial order found that, under the facts of record, there is no indication that Commission Staff misled Mr. Glick in any regard about the time to file a complaint and it deemed not credible Mr. Glick's arguments to the contrary. It also determined that the complaint was barred by the statutory limitation period.

i. Finding of Credibility.

23 Mr. Glick argues that the initial order erred in finding that he was not misled by agency staff and in finding that, as a person with a legal education who had practiced as an attorney, he should be held to a higher standard. He argues that under a motion for summary determination, the facts are construed in the light most favorable to the respondent and the question is whether a reasonable jury could find the proposed facts. He argues that, thus, his credibility is not an issue and he urges that the statute should be deemed tolled and his action deemed timely.

24 We reject Mr. Glick's argument. Construing a factual record most favorably to a respondent does not mean ignoring facts of record. Mr. Glick's complaint, which both parties accepted as the factual basis for the proceeding, clearly acknowledges his acceptance of personal responsibility for failure to file the complaint in a timely manner.⁵

⁵ "I have decided, reluctantly, to pursue the complaint, which I'd shelved for many months (as much out of a distaste for reopening an unpleasant subject as out of my own laziness)" *Complaint (attached letter of March 20, 2004, from Mr. Glick to the Commission, page 1).*

25 Here, the facts of record call into question the credibility of Mr. Glick's assertions and compel the conclusion that he was not misled by others into delaying the filing of a complaint. While Mr. Glick states in the agreed record that a Commission staff person represented that "'the Commission 'lacks jurisdiction'" over the issue, he also states that he had attended law school,⁶ that he had practiced law as a public interest attorney in administrative proceedings,⁷ and that he ultimately concluded that the Staff representation was incorrect.⁸ We believe that the facts would not support a reasonable jury determination that he was misled. Summary determination of this claim is appropriate. The initial order should be affirmed.

ii. Was the complaint timely?

26 The initial order found that the claim was one for unreasonable charges under RCW 80.04.220, and was governed—and barred—by a six-month limitation period prescribed in RCW 80.04.240. Mr. Glick argues that the proper limitation period is two years, arising from either the two-year limitation in RCW 80.04.240 relating back to RCW 80.04.230, for unlawful rates or charges, or the two-year period established in RCW 4.16.130, which governs matters not otherwise provided for. We reject this argument: there is no allegation that Verizon failed to charge the properly tariffed rate or that its rates operated in a way contrary to law,⁹ so RCW 80.04.230 would not apply. We conclude that the six-month limitation of RCW 80.04.240 applies.¹⁰

⁶ *Letter of March 20., p.2*

⁷ *Complaint, paragraph 1*

⁸ *Letter of March 20., p.3*

⁹ *See, AT&T v. Verizon*, Docket No. UT-020406, Eleventh Supplemental Order (August 12,2003, Paragraphs 41-49).

¹⁰ Even if we were to accept that a two-year limitation applied, which we do not, Mr. Glick's complaint would still be barred by the limitation period.

27 The initial order should be affirmed. The Complainant's claim for a refund under Verizon's Tariff WN U-17, Section 2, 2nd Revised Sheet 29 was not timely filed and should be dismissed.

b. Escalation of Complaint.

28 The Complaint details the Complainant's efforts in contacting Verizon to request a refund arising from the performance of the call-forwarding feature, as well as the Complainant's efforts to escalate his concerns up the supervisory line. The Complaint asserts that Verizon violated WAC 480-120-165(2) by "failing to provide chain of command information, refusing to acknowledge the existence of a department, or a procedure, for entertaining Complainant's desire to submit a claim for appropriate compensation, and failing to notify Complainant of the opportunity to appeal the Company's initial decision."

29 Mr. Glick called Verizon in early September 2001, after learning of the problem with the call-forwarding feature. Mr. Glick spoke with Ms. Cooper of Verizon's Customer Relations Department about other options for call-forwarding and requested a credit or compensation for the call-forwarding problem. Ms. Cooper placed Mr. Glick on hold, consulted with Ms. Gallentine, a supervisor, and then offered Mr. Glick a refund for the cost of the call-forwarding feature for the 22-month period, totaling \$36. Mr. Glick found that to be unsatisfactory, and asked for the name of Ms. Gallentine's supervisor and how to reach Verizon's claim department, which Ms. Cooper declined to provide.

30 Soon thereafter, Mr. Glick called Ms. Gallentine to express his "dissatisfaction, and desire for compensation." Ms. Gallentine refused to consider an additional refund, and declined to tell Mr. Glick how to pursue a claim or to identify her superior(s). She terminated the conversation. Mr. Glick ultimately reached a person who indicated that she was the manager of Customer Relations. He

angrily stated to her his dissatisfaction with Verizon, whereupon she terminated the conversation. Mr. Glick then called Verizon again, and reached "Stan," who directed Mr. Glick to contact the Commission. After Mr. Glick expressed his concerns, Stan also terminated the conversation. The Complaint admits that he yelled profanity at Stan at the conclusion of the conversation.¹¹

31 On September 7, 2001, an Everett police officer called Mr. Glick asking for Mr. Glick's side of the story involving Verizon. The officer asked Mr. Glick not to call the Company, or he could face criminal charges or a civil suit for harassment. The Complaint indicates that sometime later, Ms. Gallentine directed Mr. Glick, orally and in writing, not to call the Company, or he would face charges for harassment. Mr. Glick has continued to call Verizon over the past two and a half years to address minor repair and billing questions.

32 Mr. Glick requested the opportunity to file an "Executive Complaint". The Company informed him by letter dated June 20, 2003, that his request was denied.

33 Mr. Glick contended that Ms. Gallentine and others refused to escalate the complaint, in violation of WAC 480-120-165(2).¹² Verizon asserted that the claim

¹¹ Mr. Glick also admits that he "curs[ed] at" one of the Commission staff persons with whom he spoke. *Cover letter of March 20, 2004, page 3.*

¹² The rule reads in pertinent part as follows:

WAC 480-120-165 Customer complaints. * * * (2) When a company receives an oral or written complaint from an applicant or customer regarding its service or regarding another company's service for which it provides billing, collection, or responses to inquiries, the company must acknowledge the complaint as follows:

- (a) Provide the name of the company's contact to the complainant;
- (b) Investigate the complaint promptly;
- (c) Report the results of the investigation to the complainant;
- (d) Take corrective action, if warranted, as soon as appropriate under the circumstances;
- (e) Inform the complainant that the decision may be appealed to a supervisor at the company; and
- (f) Inform the complainant, if still dissatisfied after speaking to a supervisor, of the

is subject to a two-year statute of limitation, either under RCW 4.16.100(2) for an "action upon a penalty to the state," or RCW 4.16.130 for "actions not otherwise provided for." On the merits, Verizon noted that WAC 480-120-101 was the rule applicable at the time, but argued that the facts stated in the Complaint demonstrate full compliance with either the former or the current customer service regulation. Verizon asserts that statutes of limitation in chapter 4.16 RCW apply to the Complainant's claims of rule violations, noting that RCW 34.05.413(2) requires the "timely application of any person" for adjudication. Verizon notes that Mr. Glick received an immediate response from Ms. Cooper, that he received immediate investigation and resolution; that a supervisor, Ms. Gallentine, immediately addressed Mr. Glick's complaint; and that he had no right to further appeal to higher levels of supervision. Verizon noted that the contact name requirement in WAC 480-120-165(2) did not exist at the time the events occurred.

i. Compliance with rule.

34 The initial order ruled that, on the merits of the allegations, Verizon had satisfied the requirements of the applicable rules relating to escalation. The order noted that WAC 480-120-165(2) became effective on July 1, 2003, almost two years after the alleged violations occurred, and that it cannot be applied retroactively. The rule in force at the time the events occurred, WAC 480-120-101, requires the following:

right to file a complaint with the commission and provide the commission address and toll-free telephone number.

(1) Each complaint or dispute received by a telecommunications company shall be investigated promptly as required by the particular case, and the result reported to the applicant or subscriber. When circumstances indicate the need for corrective action, such action shall be taken as soon as possible.

(2) Each telecommunications company shall ensure that personnel engaged in initial contact with a dissatisfied or complaining applicant or subscriber shall inform the applicant or subscriber that if dissatisfied with the decision or the explanation that is provided, the applicant or subscriber *has the right to have that problem considered and acted upon by supervisory personnel. The applicant or subscriber shall be provided with the name or department of such supervisory personnel and a telephone number by which they may be reached.*

(Emphasis added.)

The initial order noted that WAC 480-120-101 does not require the Company to provide the name of the Company's contact, as required by WAC 480-120-165(2)(a), except for the name of a supervisor. The order noted, because of the recurring contacts identified in the complaint, that it appeared that the Complaint obtained all required information. The order ruled that Ms. Cooper and Ms. Gallentine complied with the requirement in WAC 480-120-101(2) to provide access to a name or department of the supervisor, as well as a telephone number, for seeking consideration of an earlier decision.

35 The order also ruled that although Mr. Glick was dissatisfied with the supervisor's resolution, the rule did not assure recourse to ever-higher levels of management. Mr. Glick had recourse to the Commission for review of consumer complaints; Verizon told him of this recourse and Mr. Glick pursued it.

36 The initial order concluded that the allegations of violation of WAC 480-120-165(2), or WAC 480-120-101, are appropriate for summary determination as a matter of law, that the facts presented in the Complaint are not in dispute, and that the facts do not support a finding of violations of WAC 480-120-101, which was the rule in effect at the time. The order denied Complainant's request for administrative penalties under WAC 480-120-019, RCW 80.04.380, and RCW 80.04.405.

37 **Petition for Administrative review.** Mr. Glick argues that he did not receive the escalation required by the rule, that he was entitled to further escalation, and that the initial order erred in failing to impose penalties on the respondent. He argues that, in fact, although his claim received Verizon supervisory attention and he did reach and talk with first- and second-line supervisors, Verizon failed to comply with the literal terms of the rule. Verizon responds, repeating and amplifying the arguments presented in its motion.

38 **Decision on review.** We reject Mr. Glick's contention and affirm the ruling of the initial order. Mr. Glick was not entitled under the prior rule, set out above, to ever-increasing escalation. The rule provided that he did have a right to present his claim to a service representative of the company and, if he were dissatisfied, to a review by a supervisor. He made that presentation and received that review during his first call, when a supervisor approved a full refund for the call-forwarding service. He subsequently spoke directly with the supervisor and with a second-line supervisor. Mr. Glick's remedies if he were dissatisfied with a supervisor's response include referral of the matter to the Commission, which he did, and filing a formal complaint, which he also did.

39 Mr. Glick alleges that on his first contact, the Company failed to provide the telephone number of a supervisory contact. The statement of facts is silent on whether or not the information was supplied. The initial order assumed from the facts of later conversations that the number was provided; we need note only a) that in the absence of relevant information in the statement of facts it would be improper to make a finding of violation, and b) that it is clear that if Mr. Glick was not provided the information, he was not harmed.

40 We reject Mr. Glick's challenge to the initial order regarding this issue, find that the issue is appropriate for summary determination, and affirm the initial order.

ii. Imposition of penalties.

41 Mr. Glick contends that the initial order erred in failing to impose penalties on Verizon for violation of the rule. Having found that no violation occurred, the Commission may impose no penalties. We reject Mr. Glick's challenge on this point and affirm the initial order.

iii. Statute of limitations.

42 The initial order determined that there is no provision in Title 80 RCW limiting the time for private formal complaints of Company violations of Commission rule. It reasoned that if the provision in Title 4 RCW applied to consumer concerns about Company compliance, the Commission itself could be barred from complaining against a regulated Company for past violations of statute and rule. It determined that the statutes of limitation in chapter 4.16 RCW do not apply to questions of violation of Commission statutes and rule.

43 Verizon argues in seeking review that the initial order errs in failing to hold that this portion of the complaint is barred by a statute of limitations in Chapter 4.16 RCW. It agrees that the subject of the complaint is not governed by the time frames set out in RCW 80.04.240. It contends, however, that the Administrative Procedure Act requirement that adjudications be timely filed¹³ supports the view that this matter must be governed by a pertinent period of limitation, else the admonition requiring timely filing would be meaningless.

44 The question appears to be whether an administrative action for which no specific limitation period is set is subject to periods of limitation applicable under the chapter of the Revised Code of Washington governing periods of limitation in civil procedure.

45 Quasijudicial proceedings under the APA appear to be "actions" within the terms of the statutes of limitation. They are proceedings that by definition are conducted according to judicial procedure; they are predicates for judicial action in the form of judicial review¹⁴ and judicial enforcement;¹⁵ and they are proceedings that, in the absence of administrative process, would appear by definition to be subjects of judicial action.¹⁶

¹³ RCW 34.05.413 reads in part as follows: "(2) When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding." (*Emphasis added*).

¹⁴ Judicial review is available in APA proceedings under RCW 34.05.510.

¹⁵ Judicial enforcement of agency action is available by an agency pursuant to RCW 34.05.578 and by others pursuant to RCW 34.05.582.

¹⁶ RCW 34.05.010 reads in part as follows: RCW 34.05.010 Definitions. * * * (1) "Adjudicative proceeding" means a proceeding before an agency in which an opportunity for hearing before that agency is required by statute or constitutional right before or after the entry of an order by the agency.

46 RCW 4.16.005 provides that when limitation periods are not set in subject-specific statutes, they are governed by pertinent provisions of chapter 4.16 RCW.¹⁷ We find that no other statute appears to be applicable. Further, we find that RCW 4.16.130, governing the limitation period for matters not otherwise specified, controls and establishes a 2-year limitation period for private formal administrative complaints that are not governed by specific statutory limitations.¹⁸ Mr. Glick did not file his action within the 2-year period and it is barred by the statute of limitations set out in RCW 4.16.130. We modify the result of the initial order accordingly.

c. Request for Order to Show Cause.

47 The Complaint seeks an “Order to Show Cause why the Company should not cease and desist from its threat of criminal prosecution of, and civil lawsuit against, Complainant, and why the Company should not cease and desist from its attempts to limit the means by which Complainant may communicate with the Company.” The Complainant argues that Verizon, through the assistance of the Everett police department, has attempted to establish an unconstitutional prior restraint on his First Amendment rights. The Company required Mr. Glick to communicate with it in writing, rather than orally, except when seeking repair services.

48 The initial order declined to address the constitutional questions that Mr. Glick raised, ruling that Verizon’s restriction does not constitute state action restricting his speech.¹⁹

¹⁷ RCW 4.16.005 reads as follows: RCW 4.16.005 Commencement of actions. Except as otherwise provided in this chapter, and except when in special cases a different limitation is prescribed by a statute not contained in this chapter, actions can only be commenced within the periods provided in this chapter after the cause of action has accrued.

¹⁸ RCW 4.16.130 reads as follows: RCW 4.16.130 Action for relief not otherwise provided for. An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

¹⁹ See, *State v. Noah*, 103 Wn. App. 2 9 at 48-49

49 On review, Mr. Glick contends that the Commission has authority to hear the claim; that the ALJ by considering the question of Commission authority has exercised jurisdiction; that his behavior does not constitute harassment; and that police and WUTC involvement do constitute state action, the latter because Ms. Elliott, a Commission employee, did not discourage police from intervening.

50 Verizon responds that first amendment claims are beyond the Commission's jurisdiction, which is limited to enforcement of the public service laws. It argues that the rule permits written communication, and notes that a tribunal cannot confer subject-matter jurisdiction through a process of determining whether it possesses subject-matter jurisdiction.

51 **Commission decision.** It appears from the facts set out in the complaint and associated documents that, at a minimum, Mr. Glick's calls to the Company were repetitive, after the Company had made its decision, and that they were at least in some instances heated—Mr. Glick acknowledges that he used profanity on at least two occasions, once in a conversation with a Verizon representative; that Verizon staff repeatedly terminated conversations with him abruptly; and that a police officer investigating his behavior told him that his actions could constitute the crime of harassment. Verizon's action under these circumstances to require Mr. Glick to communicate in writing his concerns with any matter other than need for repair services does not violate either WAC 480-120-101 or WAC 480-120-162. Mr. Glick points to no statutory authority for the Commission to convene a show cause proceeding and to no statutory authority for it to even address the issue of constitutionality that he raises. The Commission's essential statutory charge is to regulate public service companies, consistent with the public service laws.²⁰ It has no authority to address or resolve issues of the sort Mr. Glick raises here, relating to constitutional rights and obligations in the

²⁰ See, RCW 80.01.040

context of torts or crimes. Mr. Glick admits as much in his cover letter to the complaint:

I realize that the Commission Staff will, correctly, find some of the issues here raised (First Amendment, defamation) outside the scope of their jurisdiction.

52 The initial order is affirmed on this issue.

d. Assessment of Penalties in a Private Complaint.

53 After Mr. Glick determined that the call-forwarding feature was not performing as he had anticipated, he ordered a different call-forwarding feature, Enhanced Call Forwarding (ECF), in late September 2001. In June or July 2003, Mr. Glick received a bill from Verizon assessing a recurring, per-minute local usage fee for the ECF feature. He learned that the feature has always been tarified with the local usage fee, although the Company had sold the feature to Mr. Glick and billed him for 22 months with only a fixed monthly charge. He asked for itemization of his per-minute local usage fees, which Verizon refused to provide

54 Mr. Glick's formal Complaint alleges that Verizon violated WAC 480-120-161(7)(b) and provisions of its Tariff WN U-17, Section 4, 1st Revised Sheet 4(B)²¹, by refusing to provide local call detail for Measured Usage charges for the ECF feature.

²¹ WAC 480-120-161(7)(b) requires the Company to provide "an itemized statement of all charges when requested by a customer, including, but not limited to, the following: . . . Calculations of time and distance charges for calls."

55 The tariff provides that "Local Usage Billing Detail is available to customers who request a breakdown of measured calls at the rates shown in this Section of this tariff."²² The tariff expressly applies the requirements for Local Usage Billing Detail to the ECF feature: "The ECF customer is responsible for any applicable ... charges, including applicable local measured usage charges when calls to the ECF number are redirected. Local measured usage rates can be found in Section 4 of this tariff."²³ Based upon this reading of the rules and tariff, Mr. Glick requested local call detail on his bills, which request Verizon denied.

56 Verizon argues that the itemized billing claim in the Complaint is without merit. The Company asserts that Commission Staff has rejected Mr. Glick's informal complaint on this issue, and that call-by-call detail is not required. It provided no authority for its statement other than a nonspecific citation to Commission Staff. Beginning several months prior to filing the complaint, Mr. Glick withheld the portion of his business phone bill relating to Measured Usage charges, plus taxes and fees.

57 Verizon also states that Mr. Glick discontinued measured service in June 2004, and that Verizon agreed to waive the total of \$32.52 that Mr. Glick withheld from his bills beginning in October 2003.

58 **The initial order.** The initial order noted that Verizon's tariff requires the itemization of these charges on request, and that, in addition, WAC 480-120-161(7)(b) requires companies to

provide an itemized statement of all charges, when requested by a customer, including, but not limited to . . . (b) Calculations of time and distance charges.

²² Verizon Tariff WN U-17, Section 4, 1st Revised Sheet 4(B).

²³ *Id.*, citing WN U-17, Section 6, 4th Revised Sheet 3.5, Subsection D.3.

Verizon's tariff applies measured usage to call forwarding services, and allows for a breakdown of measured calls, referred to as Local Usage Billing Detail.²⁴ The order rejected contentions that the Commission Staff's asserted approval determined the issue, as neither party provided a copy of any document advising Mr. Glick of the Staff's analysis, and Staff decisions on informal complaints are not binding on the Commission in a formal proceeding.

59 The initial order proposes to accept in part the parties' resolution of issues: Verizon has agreed to waive the charges owed, and to forgive the final bill owed by Mr. Glick.²⁵ The order also ruled that Verizon must provide itemized statements for Measured Usage if requested by its customers on a going-forward basis. The order proposed a ruling that Mr. Glick's request for an order requiring prospective call detail is moot, as he has discontinued the business line for which he requested an itemized statement.

60 **Issue on review.** Neither party contests the result of the initial order on this issue, with one exception. Mr. Glick argues that upon finding a violation, the Commission must assess penalties. Verizon responds that Mr. Glick is rendered whole by the result of the order, and nothing further is required.

61 There are barriers to private actions aimed at assessing penalties. For example, RCW 80.01.100 specifically authorizes the Attorney General to institute actions and proceedings on behalf of the Commission, but does not authorize private parties to institute such actions. RCW 80.01.040 authorizes the Commission to regulate public service companies in the public interest, as provided by the public service laws, but does not authorize private parties to do so. Mr. Glick seeks to serve as a private attorney general, prosecuting a matter and imposing a fine, and to act as a private Commission, enforcing the public service laws for the benefit of the public.

²⁴ WN U-17, Section 4, 1st Revised Sheet 4(B); Section 6, 4th Revised Sheet 3.5, Subsection D.3.

²⁵ The order declined to order Verizon to refund charges paid for measured service.

62 The imposition of a penalty is an inherent aspect of regulation. The Commission exercises prosecutorial discretion, and determines when to file complaints, what consequences to seek, and what level of penalties to impose. Doing so is an essential aspect of the Commission's overall regulatory and enforcement activity. Mr. Glick is entitled to prosecute a complaint for his own benefit, but not to seek penalties on behalf of the state. Allowing him and others to take on that role could lead to vigilantism in which private parties file multiple actions not on their own behalf, but as agents of the state. That would ultimately destroy the Commission's ability to formulate and execute a coherent and cohesive enforcement policy and to accomplish regulation in the public interest, as the law requires.

63 We reject Mr. Glick's plea to impose penalties on the respondent under RCW 80.04.380 or RCW 80.04.405 and we affirm the result of the initial order.

e. Request for Order Directing Reimbursement.

64 The Complaint sought an order directing the Company to reimburse the Complainant for the copying and mailing costs of filing the Complaint. Neither party addressed this claim in the pleadings. The initial order proposed denial on the basis that the bulk of Mr. Glick's complaint was proposed for dismissal. The Commission affirms the result of the initial order, finding that the complaint has not been sustained and that no cited statutory provision allows the Commission to award costs in an adjudicative proceeding. The Commission accepts the financial settlement reached by the parties.

f. Conclusion.

65 **Conclusion.** The Commission affirms the initial order, except as provided in this order in the decision relating to the applicability of limitations on actions as provided in Chapter 4.16 RCW to administrative actions for which limitations are not otherwise provided by statute.

II. FINDINGS OF FACT

66 **Findings and conclusions.** Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings upon issues presented by the parties and the reasons and bases for those findings, the Commission now makes and enters the following summary of those facts as found. The portions of the preceding detailed findings pertaining to the ultimate findings stated below are incorporated into the ultimate findings by this reference.

67 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate the rates and conditions of service of telecommunications companies within the state of Washington.

68 (2) Verizon Northwest Inc. is a public service company providing local exchange telecommunications service to the public for compensation within the state of Washington.

69 (3) On March 22, 2004, Jeffrey D. Glick, President of Consider It Done, Ltd., a customer of Verizon Northwest Inc., filed a formal complaint with the Commission against Verizon Northwest, Inc.

- 70 (4) The pertinent facts are those set out in the complaint, including its attachments. No party disputes those facts.
- 71 (5) Verizon Northwest Inc. filed a Motion for Summary Determination in this docket in which it accepts as true the facts stated in the Complaint for purposes of consideration of its motion.

III. CONCLUSIONS OF LAW

72 Having discussed above in detail all matters material to this decision, and having stated general conclusions, the Commission now makes the following summary of its conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 73 (1) The Commission has jurisdiction over the subject matter of this proceeding and the parties to the proceeding, except as noted in this order. *RCW 80.01.040; RCW 80.04.220, RCW 80.04.240.*
- 74 (2) Summary determination is appropriate "if the pleadings together with any properly admissible evidentiary support ... show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *WAC 480-07-380(2)(a).*
- 75 (3) Claims for refunds filed under *RCW 80.04.220* and *RCW 80.04.230* must be filed with the Commission within six months or two years, respectively, of the cause of action accruing. *See, RCW 80.04.240.* The procedure under *RCW 80.04.240* is the exclusive process for obtaining refunds under the two statutes.

- 76 (4) Complainant's claim for compensation under Verizon's Tariff WN U-17 is barred as untimely-filed under RCW 80.04.240.
- 77 (5) Statutes of limitation in chapter 4.16 RCW apply to private formal complaints alleging violation of Commission statutes and rule in the absence of other specific statutes of limitation pertinent to the action in question.
- 78 (6) WAC 480-120-165(2) became effective on July 1, 2003, almost two years after the alleged violations occurred, and cannot be applied retroactively.
- 79 (7) The Commission's rules allow for oral *or* written communication between customers and telecommunications companies, and permit written communication in circumstances such as those of record in this matter. *See WAC 480-120-165(2); see also WAC 480-120-101.*
- 80 (8) Verizon Northwest Inc.'s actions to limit the form of the Complainant's communication do not rise to the level of state action, nor does this Commission's consideration of the claim constitute state action through judicial enforcement. *See, State v. Noah*, 103 Wn. App. 29, 48-49, 9 P.3d 858, 870 (2000).
- 81 (9) The facts presented in the Complaint do not support a finding of violations of WAC 480-120-101 relating to escalation of complaints. Summary determination on the allegation of violation is appropriate as a matter of law.
- 82 (10) WAC 480-120-161(7)(b) and Verizon Northwest Inc.'s tariff WN U-17, Section 4, 1st Revised Sheet 4(B); Section 6, 4th Revised Sheet 3.5, Subsection D.3., require the itemization of charges for measured usage.

- 83 (11) Verizon Northwest Inc. violated WAC 480-120-161(7)(b) and Verizon Northwest Inc.'s tariff WN U-17, Section 4, 1st Revised Sheet 4(B); Section 6, 4th Revised Sheet 3.5, Subsection D.3., by refusing to provide the call detail Mr. Glick requested.
- 84 (12) No penalty should be assessed on the demonstrated violations of WAC 480-120-161(7)(b) and Verizon Northwest Inc.'s tariff WN U-17, Section 4, 1st Revised Sheet 4(B); Section 6, and 4th Revised Sheet 3.5, Subsection D.3.
- 85 (13) The Complainant's request for an order requiring the Company to provide Mr. Glick with prospective call detail is moot, as the Complainant has discontinued service for the business line for which he requested an itemized statement.
- 86 (14) The Complainant should be directed to comply with the terms of the rule and the Company's tariff related to the provision of call detail.

IV. ORDER

87 The Commission denies Mr. Glick's petition for administrative review and grants Verizon's petition for administrative review. In so doing, the Commission affirms in part and modifies in part the initial order, as follows:

- 88 (1) Verizon Northwest Inc.'s Motion for Summary Determination is granted as to the Complainant's claim for compensation, for violation of WAC 480-120-101, and for an Order to Show Cause.
- 89 (2) Verizon Northwest Inc.'s Motion for Summary Determination is denied as to the claim in the Complaint for violation of WAC 480-120-161(7)(b) and the tariff WN U-17, Section 4, 1st Revised Sheet 4(B), and Section 6, 4th Revised Sheet 3.5, Subsection D.3.

- 90 (3) The settlement proposed by the parties for determining the appropriate remedy for violations of WAC 480-120-161(7)(b) and the tariff WN U-17, Section 4, 1st Revised Sheet 4(B), and Section 6, 4th Revised Sheet 3.5, Subsection D.3., is approved and adopted, requiring Verizon Northwest Inc. to waive the outstanding Measured Usage charges that Mr. Glick owes to the Company.
- 91 (4) Verizon Northwest Inc. must provide itemized statements for Measured Usage under WAC 480-120-161(7)(b) and tariff WN U-17, Section 4, 1st Revised Sheet 4(B), and Section 6, 4th Revised Sheet 3.5, Subsection D.3., if requested by its customers on a going-forward basis.
- 92 (5) The Complainant's request for reimbursement for the copying and mailing costs of filing the Complaint is denied.
- 93 (6) The remaining procedural schedule, set forth in Order No. 01 in this proceeding, is canceled.

Dated at Olympia, Washington, and effective this 28th day of January, 2005.

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 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.