

EXHIBIT B
Defendant Verizon Northwest Incorporated's Motion to Dismiss
Plaintiffs' First Amended Complaint

HON. J. KATHLEEN LEARNED
Hearing Date & Time: October 6, 2000 at 10:00 a.m.
With Oral Argument

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STOKES LAWRENCE, P.S.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

SANDY JUDD, TERA HERIVEL, and
ZURAYA WRIGHT, for themselves, and
on behalf of all similarly situated persons,

Plaintiff,

v.

AMERICAN TELEPHONE AND
TELEGRAPH COMPANY; VERIZON
NORTHWEST INCORPORATED;
CENTURYTEL TELEPHONE UTILITIES,
INC.; NORTHWEST
TELECOMMUNICATIONS, INC., d/b/a PTI
COMMUNICATIONS, INC.; U.S. WEST
COMMUNICATIONS, INC.; T-NETIX,
INC.,

Defendants.

No. 00-2-17565-5 SEA

**DEFENDANT VERIZON
NORTHWEST INCORPORATED'S
MOTION TO DISMISS PLAINTIFFS'
FIRST AMENDED COMPLAINT**

(ORAL ARGUMENT REQUESTED)

I. RELIEF REQUESTED.

Defendant Verizon Northwest Incorporated, formerly known as GTE Northwest Incorporated, ("Verizon Northwest") respectfully requests that this Court dismiss with prejudice Plaintiffs' First Amended Complaint ("Complaint"). Plaintiffs allege that Verizon Northwest failed to make legally required rate disclosures in connection with its provision of operator services to Washington state prisons.¹ The Complaint should be dismissed pursuant

¹ Plaintiffs are individuals who claim to have received and paid for long-distance collect calls from Washington State prison inmates. Amended Complaint at ¶¶ 1-3.

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1 to CR 12(b)(6) because Plaintiffs fail to state a claim against Verizon Northwest upon which
2 relief can be granted. Plaintiffs' claims should be dismissed because they presuppose a duty to
3 disclose when, in fact, the law did not require Verizon Northwest to provide any rate
4 disclosures to Plaintiffs.

5 Alternatively, Plaintiffs' claims should be dismissed because they lie within the primary
6 jurisdiction of the Washington Utilities and Transportation Commission ("WUTC"). The
7 WUTC is charged by statute with responsibility for regulating rate disclosures. Contrary to
8 Plaintiffs' allegations, the WUTC first expressly exempted local exchange carriers like Verizon
9 Northwest from its rate disclosure requirements, and thereafter granted Verizon Northwest's
10 petition for a waiver from those requirements. Verizon Northwest has no legal obligation to
11 make any rate disclosures to Plaintiffs until September 1, 2000.

11 II. SUMMARY OF ARGUMENT.

12 Plaintiffs' allege that RCW 80.36.520 imposes disclosure requirements on Verizon
13 Northwest and that the alleged failures to disclose thus constitute a *per se* violation of the
14 Washington Consumer Protection Act under RCW 80.36.530. However, Plaintiffs cannot, as
15 a matter of law, establish Verizon Northwest's violation of RCW 80.36.520 because that
16 statute imposes no obligations on Verizon Northwest. Even if it could be argued that violation
17 of the WUTC's disclosure rules constitutes a violation of RCW 80.36.520, Verizon Northwest
18 has not, as a matter of law, violated the WUTC rules (which do not require Verizon Northwest
19 to make any disclosures until September 1, 2000). Absent a violation of the prior or current
20 rules, there cannot possibly be a violation of RCW 80.36.520. Plaintiffs thus fail to state a
21 Consumer Protection Act claim.

22 Finally, the primary jurisdiction doctrine requires dismissal of Plaintiffs' claims. The
23 WUTC is the agency charged by law with crafting the disclosure requirements, and it retains
24 broad enforcement powers. Under well-established principles governing when the WUTC -
25 not the Court - should decide Plaintiffs' claims, this Court should dismiss Plaintiffs'
26 Complaint.

1 **III. STATEMENT OF FACTS.**

2 **A. Regulatory Background.**

3 **1. The Enabling Statute.**

4 In 1988, the Washington Legislature enacted RCW 80.36.520. That statute directed the
5 WUTC to adopt rules requiring alternate operator service companies (“AOS companies”) to
6 assure “appropriate disclosure” to consumers:

7 The utilities and transportation commission shall by rule require, at a minimum,
8 that any telecommunications company, operating as or contracting with an
9 alternate operator services company, assure appropriate disclosure to consumers
of the provision and the rate, charge or fee of services provided by an alternate
operator services company.

10 For the purposes of this chapter, “alternate operator services company” means a
11 person providing a connection to intrastate or interstate long-distance services
12 from places including, but not limited to, hotels, motels, hospitals, and
customer-owned telephones.

13 RCW 80.36.520. Significantly, the Legislature did not impose any requirements on AOS
14 companies in RCW § 80.36.520. Rather, it deferred to the WUTC first to define by rule
15 which telecommunications companies were operating as or contracting with AOS companies
16 and then to craft “appropriate” disclosure requirements.

17 **2. WUTC Regulation.**

18 In response to the Legislature’s mandate, the WUTC promulgated WAC 480-120-141
19 in 1989. This rule imposed only limited disclosure requirements on AOS companies, which
20 did not include disclosure of rates. The rule remained in effect until amended by the WUTC in
21 1991 (“the 1991 Rule”).²

22 The 1991 Rule changed the regulatory landscape in two pertinent respects. First, the
23 WUTC adopted a new definition for “AOS company” that specifically excluded local exchange
24 companies. *See* WAC 480-120-021 (1991) (defining AOS company as any company “other

25 ² The 1989 rule has no application here because the rule had no effect after 1991, and
26 Plaintiffs assert no claims before July 20, 1996. Moreover, the 1989 regulation does not
require AOS companies to disclose their rates.

1 than a local exchange company” that provides “a connection to intrastate or interstate long-
2 distance or to local services from locations of call aggregators”). Second, the WUTC required
3 AOS companies to provide disclosure of their rates “upon request.” See WAC 480-120-141
4 (5)(iii)(a) (1991) (“The AOS company shall immediately, upon request, and at no charge to the
5 consumer disclose to the consumer . . . a quote of the rates or charges for the call, including
6 any surcharge.”). The WUTC’s exemption of local exchange companies renders the 1991
7 regulations inapplicable to Verizon Northwest because Verizon Northwest (whose name was
8 recently changed from GTE Northwest Incorporated to Verizon Northwest Incorporated) has
9 been a local exchange company throughout the relevant time period. See generally
10 *Washington Indep. Tel. Assoc. v. TRACER*, 75 Wn. App. 356, 361 (1994) (“WITA”) (“[t]he
11 two largest LECs are U.S. West and GTE Northwest”).

12 The WUTC further modified its disclosure requirements in 1999 (“the 1999 Rule”).
13 The 1999 Rule, unlike its predecessors, applies to local exchange companies. See WAC 480-
14 120-021 (1999). The 1999 Rule requires that:

15 Before an operator-assisted call from an aggregator location may be connected by
16 a presubscribed OSP [operator service provider], the OSP must verbally advise
17 the consumer how to receive a rate quote, such as by pressing a specific key or
18 keys, but not more than two keys, or by staying on the line This rule
19 applies to all calls from pay phones or other aggregator locations, including
20 prison phones, and store-and-forward pay phones or “smart” phones.

21 WAC 480-120-141(2)(b). Although this rule implements stringent disclosure requirements, the
22 WUTC has the regulatory power to waive compliance with the requirements. See WAC 480-
23 120-141(1) (rule applies to all “telecommunications companies providing operator services”
24 unless compliance is “specifically waived by order of the Commission”). To that end, the
25 WUTC’s Order announcing the 1999 Rule expressly solicited waiver petitions. See WSR 99-
26 020020 (permanent) at 9.

3. Verizon Northwest’s Waiver Petitions.

On March 4, 1999, Verizon Northwest filed a timely waiver petition with the WUTC.
Verizon Northwest asked the WUTC to waive its compliance with the 1999 Rule because, at
that time, Verizon Northwest lacked the technological capability to make the required

1 disclosures.³ See Order Granting Temporary Waiver of WAC 480-120-141(2)(b) and WAC
2 480-120-141(7)(a) (“Temporary Waiver Order”) (attached hereto as Exhibit “A”). The
3 WUTC did not act immediately on Verizon Northwest’s petition, and while the original
4 petition was still pending, Verizon Northwest filed an amended waiver petition on July 28,
5 2000. In its amended waiver petition, Verizon Northwest notified the WUTC that it would
6 have the technological capability to make the required disclosures no later than September 1,
7 2000. Thus, Verizon Northwest requested a waiver until that date. The WUTC granted
8 Verizon Northwest’s waiver petition on August 9, 2000. See Temporary Waiver Order at ¶ 1
9 (“The Commission grants Verizon Northwest’s request for a waiver until September 1, 2000 of
10 WAC 480-120-141(2)(b), which requires automatic access to rate quotes for consumers using
11 pay phones.”)

12 Verizon Northwest’s amended waiver petition also specifically requested a permanent
13 waiver “of that portion of the rule requiring access to the automatic rate disclosure from the
14 party originating the operator assisted (collect call), when that call originates from an inmate
15 phone at a correctional facility.” See Order Granting Waiver in Part of WAC Rule 480-120-
16 141(2)(b) (“Permanent Waiver Order”) (attached hereto as Exhibit “B”). Verizon Northwest
17 requested this waiver based on concerns that allowing inmates access to a live operator could
18 result in fraud and harassment. *Id.* Of special relevance to this case, the WUTC granted
19 Verizon Northwest’s request for permanent waiver on the condition that Verizon Northwest
20 have technology in place no later than September 1, 2000 that allows recipients of inmate-
21 initiated collect calls to access rate information. See Permanent Waiver Order.

22 **IV. STATEMENT OF ISSUES.**

23 Whether Plaintiffs’ Complaint fails to state a claim for relief against Verizon Northwest
24 because the WUTC exempted and relieved companies such as Verizon Northwest from making

25 _____

26 ³ Pursuant to Rule 201(b) of the Washington Evidence Rules, this Court should take judicial
notice of the WUTC’s Orders granting Verizon Northwest’s amended waiver petition.
The WUTC’s issuance of Orders granting Verizon’s petition is beyond reasonable dispute
and may be accurately and readily determined by resort to the WUTC’s records. Thus, the
WUTC Orders are proper subjects for judicial notice.

1 disclosures “required by state law;” and whether primary jurisdiction of Plaintiffs’ Complaint
2 lies with the WUTC.

3 **V. ARGUMENT AND AUTHORITIES.**

4 **A. Applicable Standards.**

5 CR 12(b)(6) requires dismissal of Plaintiffs’ claims if “it appears beyond a reasonable
6 doubt that no facts exist to justify recovery.” *Howell v. Alaska Airlines, Inc.*, 99 Wn. App.
7 646, 648-49 (2000). Although Plaintiffs’ factual allegations must be taken as true, *id.* at 648,
8 legal issues presented by Plaintiffs’ allegations “are subject to full judicial analysis” and need
9 not be accepted as true. *Ironworkers Dist. Council of the Pacific Northwest v. Woodland Park
Zoo Planning & Dev.*, 87 Wn. App. 676, 684 n.1 (1997).

10 Determination of whether Plaintiffs’ claims should be dismissed pursuant to the primary
11 jurisdiction doctrine lies within the Court’s sound discretion. *See Kerr v. Dept. of Game*, 14
12 Wn. App. 427, 542 (1975).

13 **B. Plaintiffs’ Complaint Should be Dismissed Because it Fails to State A Claim
Against Verizon Northwest.**

14 1. Plaintiffs do not allege a violation of the WUTC’s disclosure requirements.

15 Plaintiffs allege in vague and conclusory fashion that Verizon Northwest has failed to
16 make the disclosures “required by state law” in connection with its provision of operator services
17 to Washington state prisons. Complaint at ¶ 6. The only disclosures “required by state law” are
18 those adopted by the WUTC in its rules. Because Plaintiffs define the relevant time period as
19 June 20, 1996 to the present, the WUTC’s current and prior rules are relevant.

20 From June 20, 1996 to January 28, 1999, the WUTC expressly exempted local
21 exchange companies from its disclosure requirements. *See* WAC 480-120-021. Verizon
22 Northwest was a local exchange company during that entire time period. *See generally, WITA*,
23 75 Wn. App. at 361. Verizon Northwest cannot, as a matter of law, be liable for failing to
24 make rate disclosures during this time because the WUTC’s rules did not impose any duty or
requirement on Verizon Northwest to make any disclosures.

25 Plaintiffs’ claims from January 29, 1999 to the present are similarly flawed. The
26 disclosure requirements applicable to that time period are those set forth in WAC 480-120-

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1 141(2)(b). Although WAC 480-120-141(2)(b) applies to local exchange companies, the
2 WUTC has the regulatory authority to waive the Rule's requirements in particular instances.
3 See WAC 480-120-141(1) (rule applies to "all telecommunications companies providing
4 operator services" so long as its application is "not specifically waived by order of the
5 Commission").

6 In a recent Order, the WUTC granted Verizon Northwest such a waiver, holding that:

- 7 • Verizon Northwest is not required to make the disclosures set forth in 480-120-
141(2)(b) until September 1, 2000; and
- 8 • Verizon Northwest is permanently exempted from providing inmates access to
9 rate information so long as Verizon Northwest provides the recipients of their
10 calls with such access no later than September 1, 2000.

11 See Temporary Waiver Order (Exhibit A); Permanent Waiver Order (Exhibit B). Based on
12 these regulatory waivers, Verizon Northwest cannot, as a matter of law, be liable for failing to
13 make the disclosures required by WAC 480-120-141(2)(b).⁴

- 14 2. Verizon Northwest cannot be liable for violating RCW 80.36.520 because that
15 statute does not require Verizon Northwest to make any disclosures.

16 Plaintiffs base their Consumer Protection Act claim on Verizon Northwest's alleged
17 violations of RCW 80.35.520. See Complaint at ¶¶ 10, 19. Plaintiffs allege no other basis for
18 their claim. Thus, Plaintiffs fail to state a Consumer Protection Act claim if they fail to allege
19 facts that, when taken as true, would constitute a violation of RCW 80.36.520.

20 Plaintiffs have not alleged facts sufficient to establish Verizon Northwest's violation of
21 RCW 80.36.520 for the simple reason that RCW 80.36.520 does not require Verizon
22 Northwest to make any disclosures. RCW 80.36.520 provides that:

23 ⁴ Even if Plaintiffs could establish Verizon Northwest's violation of the WUTC disclosure
24 requirements, that violation would not give rise to Consumer Protection Act liability.
25 Plaintiffs base their Consumer Protection Act claim on RCW 80.36.530. That statute
26 provides that "a violation of RCW. . . 80.36.520 . . . constitutes an unfair or deceptive act
in trade or commerce in violation of Chapter 19.86 RCW, the Consumer Protection Act."
See RCW 80.36.530. Under the plain language of the statute, a violation of WUTC rules
does not give rise to Consumer Protection Act liability. Rather, to trigger RCW

1 The utilities and transportation commission shall by rule require, at a minimum,
2 that any telecommunications company, operating as or contracting with an
3 alternate operator services company, assure appropriate disclosure to consumers
4 of the provision and the rate, charge or fee of services provided by an alternate
operator services company.

5 RCW 80.36.520. Based on a plain reading of the statute, this law does not impose disclosure
6 requirements on Verizon Northwest or any other telecommunications company. *Cf. Potter v.*
7 *Dept. of Labor & Indus.*, 3 P.3d 229 (Wn. App. 2000) (when statute's meaning is clear, a
8 court should give effect to its plain language without regard to rules of statutory construction).
9 The statute requires the WUTC to adopt disclosure rules. The adopted disclosure rules, taken
10 with the WUTC's waiver, do not apply to Verizon Northwest until September 1, 2000.
11 Plaintiffs fail to state a claim because: (i) RCW 80.36.520 does not impose disclosure
12 obligations on Verizon Northwest; and (ii) even if a violation of the WUTC rules could be
13 considered a violation of RCW 80.36.520, the WUTC rules do not yet apply to Verizon
14 Northwest. As a result, Verizon Northwest's alleged failure to make appropriate disclosures
does not, as a matter of law, constitute a violation of RCW 80.36.520.

15 Having failed to allege an RCW 80.36.520 violation, Plaintiffs have not triggered RCW
16 80.36.530's application. *See* RCW 80.36.530. Because Plaintiffs allege no other basis for
their Consumer Protection Act claim, the claim should be dismissed.

17 C. **In the Alternative, Plaintiffs' Complaint Should be Dismissed Because Plaintiffs'**
18 **Claims Lie Within the WUTC's Primary Jurisdiction.**

19 The primary jurisdiction doctrine applies when both a court and an administrative
20 agency have jurisdiction over a particular issue. *D.J. Hopkins, Inc. v. GTE Northwest, Inc.*,
21 89 Wn. App. 1, 7 (1997). The Supreme Court of Washington has explained the doctrine as
22 requiring that "issues within an agency's special expertise be decided by the appropriate
23 agency." *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 344 (1998).

24 As the Washington Supreme Court recently explained, under the primary jurisdiction
25 doctrine:

26 80.36.530's application, Plaintiffs must allege a viable violation of RCW 80.36.520. As
set forth in Section III(B)(2) of this Brief, Plaintiffs have not carried this burden.

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1 claims must be referred to an agency if (1) the administrative agency has the
2 authority to resolve the issues that would be referred to it by the court; (2) the
3 agency has special competence over all or some part of the controversy which
4 renders the agency better able than the court to resolve the issues; and (3) the
5 claim before the court involves issues that fall within the scope of a pervasive
regulatory scheme creating a danger that judicial action would conflict with the
regulatory scheme.

6 *Id.* at 345 (emphasis added). Because all three factors are satisfied here, Plaintiffs' claims
7 should be referred to the WUTC.

8 1. The WUTC has the authority to resolve Plaintiffs' claims.

9 The WUTC has broad powers to define and enforce the disclosure requirements. In the
10 first instance, the WUTC has the authority to adopt rules regulating operator service providers'
11 disclosure requirements. The WUTC also has the authority to waive the application of those
12 rules and to determine when they will take effect as to particular service providers. In
13 addition, if an operator service provider fails to provide the required disclosures, the
14 Commission can suspend the provider's registration, assess a penalty, and take "any other
15 action regarding a provider of operator services as authorized by law." WAC 480-120-
16 141(9)(a)-(c). The Commission also has the authority resolve consumer complaints regarding
17 inadequate disclosures. *See* WAC 480-120-141(9)(d). Finally, the WUTC has the authority to
18 "make and issue interpretive and policy statements when necessary to terminate a controversy
19 or to remove a substantial uncertainty as to the application of statutes or rules of the
20 commission." *Tanner v. Elec. Coop. v. Puget Sound Power & Light*, 128 Wn.2d 656, 666
21 (1996) (*quoting* WAC 480-09-200(1)). Thus, referring Plaintiffs' case to the WUTC will not
22 deprive Plaintiffs of a forum for their claims. Plaintiffs should not be allowed to proceed with
their claims until the WUTC has had the opportunity to exercise its authority and expertise to
determine if its disclosure rules have been violated.

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VERIZON'S MOTION TO DISMISS
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1 2. The WUTC has special competence over Plaintiffs' claims of inappropriate rate
2 disclosure.

3 Washington courts have consistently recognized the WUTC's special competence in
4 regulating telecommunications services. See generally *D.J. Hopkins, Inc. v. GTE Northwest*, 89
5 Wn. App. 1, 8-9 (WUTC has special competence to resolve consumer claim alleging deceptive
6 billing practices by telecommunications provider); *United & Informed Citizen Advocates*
7 *Network v. WUTC*, WL 713702 at * 3 (Wn. App. Sept. 13, 1999) (WUTC has special
8 competence to resolve customer claim alleging improper transfer service interruption by
9 telecommunications provider). This special competence extends to the regulation of operator
10 service provider disclosures.

11 Plaintiffs' claims arise from their overarching allegation that Verizon Northwest failed
12 to provide them with "appropriate disclosures." See Complaint at ¶¶ 6, 10. When the
13 Washington Legislature enacted RCW 80.36.520, it charged the WUTC with responsibility for
14 determining the entities that would make the disclosures, the disclosures that would be made,
15 and when the disclosure obligations would commence. See RCW 80.36.520. In response to
16 this mandate, the WUTC adopted comprehensive disclosure requirements. Determining
17 whether Verizon Northwest has any obligations under the WUTC rules and, if so, whether
18 Verizon Northwest has complied with those obligations, lies within the WUTC's special
19 competence.

20 3. If this Court exercises jurisdiction over Plaintiffs' claims, there is a significant
21 danger that its action would conflict with the WUTC's regulatory scheme.

22 The WUTC rules regarding operator service disclosures are part of a pervasive
23 regulatory scheme. Indeed, the Washington Court of Appeals has described WUTC rules
24 adopted pursuant to RCW Title 80 (like the operator service disclosure rules) as "one of those
25 pervasive regulatory schemes into which we will not venture before the WUTC has made a
26 final decision based on its expertise." *United & Informed Citizen Advocates Network*, 1999
27 WL 713702 at *3. Any action by this Court on Plaintiffs' claims poses a significant danger of
28 conflict with the WUTC regulatory scheme.

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1 In the Complaint, Plaintiffs allege that six different telecommunications companies have
2 provided inappropriate disclosures for inmate-initiated collect calls. In short, accepting
3 Plaintiffs' allegations as true for purposes of this motion, Plaintiffs challenge a widespread
4 industry practice. In *D.J. Hopkins, Inc. v. GTE Northwest, Inc.*, 89 Wn. App. 1 (1997), the
5 Washington Court of Appeals characterized the plaintiff's claims as challenging "a widespread
6 practice of GTE, and possibly other phone companies." *Id.* at 8. Based on the far-reaching
7 nature of the plaintiff's claims, the court found a danger that court action might conflict with
8 agency resolution. *Id.* at 9. In affirming referral to the WUTC, the court noted that "[c]ourts
9 often defer to agency jurisdiction when the allegations involve widespread acts, and retain
jurisdiction only when the claimant's allegations involve an isolated action or transaction." *Id.*

10 The danger of conflict is especially great here, because the WUTC has actively
11 regulated with respect to its disclosure requirements and has broad authority to waive those
12 requirements. See WAC 480-120-141(1). As a result of this discretion, the WUTC can
13 modify disclosure requirements to address the unique problems encountered by inmate
14 telephone service providers. For example, in its Order granting Verizon Northwest's
15 amended waiver petition, the WUTC stated that Verizon Northwest "had concerns about
16 harassment and fraud that can take place when an inmate has access to a live operator, and the
17 Department of Corrections also expressed similar concerns." See Permanent Waiver Order.
18 Acting on Verizon Northwest's concerns, the WUTC waived Verizon Northwest's obligation
19 to provide inmates automatic rate disclosure to inmates, so long as Verizon Northwest provides
20 such disclosures to inmate call recipients by September 1, 2000. The WUTC also waived
21 Verizon Northwest's obligation to provide any of the WAC 480-120-141(2)(b) disclosures until
September 1, 2000.

22 A decision by this Court that Verizon Northwest had disclosure obligations under
23 WAC 480-120-141(2)(b) before September 1, 2000 would upset the WUTC's regulatory
24 scheme and substantially weaken the WUTC's regulatory authority. This Court should dismiss
25 Plaintiffs claims under the primary jurisdiction doctrine to avoid the clear danger that court
26 action here could conflict with the WUTC's pervasive regulatory scheme. Dismissal under the

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1 primary jurisdiction doctrine will also ensure that Verizon Northwest is not subject to
2 conflicting legal obligations.

3 **VI. CONCLUSION.**

4 For the foregoing reasons, and on the authorities cited, Verizon Northwest respectfully
5 requests that this Court dismiss Plaintiffs' Amended Complaint for failure to state a claim, or,
6 in the alternative, dismiss the Amended Complaint under the primary jurisdiction doctrine.

7 DATED this 25th day of August, 2000.

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VERIZON'S MOTION TO DISMISS
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EXHIBIT B-a
RE: Defendant Verizon Northwest Incorporated's
Motion to Dismiss Plaintiffs' First Amended
Complaint

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Request for Petition of
Waiver of Administrative Rules for

GTE NORTHWEST INC.
.....

)
) DOCKET UT-990401
)
) ORDER GRANTING TEMPORARY
) WAIVER OF
) WAC 480-120-141(2)(b) and
) WAC 480-120-141 (7)(a)
)

On March 4, 1999 GTE Northwest Inc.(now Verizon, Northwest Inc. or "Verizon") filed a petition for a waiver of WAC 480-120-141 (7)(a); and for a waiver until January 1, 2000, of WAC 480-120-141(2)(b). Verizon explained in its petition that it sought a waiver of certain parts of the operator service rules because technology and equipment were not available at that time to comply with the Commission's newly revised rule requirements. In particular, Verizon sought an extension for compliance with WAC 480-120-141(2)(b) relating to rate quotes until January 1, 2000 to develop the technology to provide automatic verbal rate quotes from a pay phone. Verizon also asked for a waiver of WAC 480-120-141(7)(a); this section of the rule relates to the capabilities of providing emergency access to Enhanced 911 (E-911) and Public Safety Answering Points (PSAPs) providing E-911 service. Verizon claimed that due to equipment limitations, it was unable to transfer a call from an operator to a known PSAP location with a single keystroke, and at the same time provide the automatic number identification (ANI) that enables direction of emergency assistance to the correct location.

On July 28, 2000, Verizon asked for an extension to the originally-filed petition. Verizon states that it cannot complete the necessary changes to comply with WAC 480-120-141 (2)(b) until September 1, 2000.

DISCUSSION

Verbal Rate Disclosure

The Commission made significant changes to its pay phone and operator services rules in January 1999 to carry out consumer protections regarding pay phone use after deregulation of much of the pay phone industry at the federal level. The Commission's rules were revised in order to be consistent with the Telecommunications Act of 1996 and subsequent FCC orders relating to pay phones and operator services, and to ensure adequate protections for users of pay phones within Washington state. One of the major additions to the FCC's rules and subsequently the Commission's rules is the capability for a consumer to receive a verbal rate quote from the pay phone within no more than two key strokes.

In its amended petition, Verizon claims that it can comply with the verbal rate disclosure by September 1, 2000. Since the company claims compliance by September 1, 2000, only 3 weeks away, the Commission feels this is a reasonable request, as long as Staff conducts an investigation into the practices of Verizon's operator services in September 2000.

Emergency Calls

In its original petition, Verizon asked for a waiver of WAC 480-120-141(7)(a). This section of the rule relates to the capabilities of providing emergency access to E-911 and PSAPs. The rule requires that an operator service provider transfer the caller into the appropriate E-911 system and to the PSAP serving the location of the caller with a single keystroke from the operator's console. This must include automatic identification of the exact location and address from which the call is being made. This request will occur when a caller dials 0 for the operator during an emergency situation.

Verizon recognizes that the capability exists to transfer a call from an operator to a known PSAP location with a single keystroke. In its petition, it noted that it would have to provide a "speed calling-type" service to reach each of the PSAPs to which a caller could be transferred. Its original petition cited concerns about the cost required to provide trunking from each operator center to the PSAPs. Further, it indicated that to display and forward the address and location, its operators would need to access the E-911 database, which is completely separate from the Line Information Database used by Verizon's operator services.

The Commission's staff has partnered with Emergency Management personnel since the inception of this rule change in order to help pay phone service providers and operator service providers comply with this rule. Companies use current technologies in order to achieve one keystroke access to the proper PSAP. One of the intentions of the upgrade to enhanced 911 service within the state was to have a central database that includes all phone numbers and physical locations. To date all locations within Washington state have upgraded to the E-911 system.

Verizon states that the company no longer has the trunking issues, but that access to the E-911 database must be addressed. The company now states that it could have the necessary changes implemented in approximately 90 days to ensure compliance with this part of the rule.

Emergency access to the appropriate PSAP is vitally important to the safety and welfare of consumers. The Commission believes that Verizon should take the necessary steps to access the E-911 database and PSAPs in compliance with this rule by November 15, 2000. The company must report to staff specific action steps and progress to ensure full compliance with this rule. With those conditions, the Commission grants Verizon's request for a temporary waiver of WAC 480-120-141(7)(a) until November 15, 2000.

FINDINGS

THE COMMISSION FINDS:

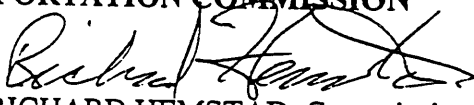
1. Verizon Northwest Inc., a Washington corporation, is a public service company subject to the jurisdiction of this Commission under the provisions of chapter 80.28 RCW.
2. Verizon can comply with the verbal rate disclosure by September 1, 2000. Granting the waiver until September 1, 2000 of WAC 480-120-141(2)(b), which requires automatic access to rate quotes for consumers using pay phones is reasonable and should therefore be approved.
3. Verizon can comply with one keystroke access to E-911 and PSAPs by November 15, 2000. Extending time for compliance with WAC 480-120-141 (7)(a), is reasonable and therefore should be approved.

ORDER

1. The Commission grants Verizon's request for a waiver until September 1, 2000 of WAC 480-120-141(2)(b), which requires automatic access to rate quotes for consumers using pay phones. Staff is directed to conduct an investigation into the practices of Verizon's operator services in September 2000.
2. The Commission grants Verizon's request for a waiver until November 15, 2000 of WAC 480-120-141 (7)(a), one keystroke access to E-911 and PSAPs. Verizon must report to the Commission no later than November 15, 2000, describing in reasonable detail the specific action steps it has taken, and the progress of Verizon to ensure full compliance to this rule.

DATED at Olympia, Washington, and effective this 9th day of August, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner

DISSENTING OPINION

MARILYN SHOWALTER, Chairwoman, dissenting -- I dissent. These rules have been in effect since January 29, 1999. No evidence has been presented why the company could not have complied with the rules by now. While I appreciate the company's willingness to comply with the rules within the next 20 (or 90) days, I do not think this is a persuasive reason why the rules should be waived for that period of time.



MARILYN SHOWALTER, Chairwoman

EXHIBIT B-b
RE: Defendant Verizon Northwest Incorporated's
Motion to Dismiss Plaintiffs' First Amended
Complaint

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Request for Petition of)	
Waiver of Administrative Rules for)	DOCKET UT-990401
)	
GTE NORTHWEST, INC.)	ORDER GRANTING WAIVER IN PART
)	OF WAC RULE 480-120-141 (2)(b)
)	
.....)	

On July 28, 2000, GTE Northwest, Inc., (now Verizon Northwest Inc., or "Verizon") filed an amendment to a previously-filed petition asking for a waiver of WAC 480-120-141 (2)(b) as it relates specifically to inmate phones. Verizon seeks a permanent waiver, only at correctional facilities, and only for calls from an inmate originating an operator-assisted (collect) call, of the portion of the rule requiring automatic rate disclosure.

DISCUSSION

The Commission made significant changes to its pay phone and operator services rules in January 1999 to carry out consumer protections regarding pay phone use after deregulation of much of the pay phone industry at the federal level. The Commission's rules were revised to be consistent with the Telecommunications Act of 1996 and subsequent FCC orders relating to pay phones and operator services, and to ensure adequate protections for users of pay phones within Washington state. One of the major additions to the FCC's rules and subsequently the Commission's rules is the capability for a consumer to receive a verbal rate quote from the pay phone within no more than two key strokes. This Commission's rules define a consumer as the party initiating and or paying for a call using operator services. In collect calls, both the originating and the party on the terminating end of the call are considered consumers.

Verizon seeks a permanent waiver of that portion of the rule requiring access to the automatic rate disclosure from the party originating the operator-assisted (collect) call, when that call originates from an inmate phone at a correctional facility. Verizon had intended to utilize live operators to perform this function. However, it had concerns about harassment and fraud that can take place when an inmate has access to a live operator, and Department of Corrections also expressed similar concerns. Subsequently, Verizon learned of current automated technology that prompts the called party to ask for a rate quote. The inmate cannot initiate the rate quote, however, and that is the reason why there is a need for a limited waiver. Once the called party initiates the rate request, both the caller and the called party will hear the rate information. Either party may terminate the call by hanging up. Verizon will have this automated verbal rate prompt installed by September 1, 2000.

The Commission believes this is a reasonable request as long as Verizon always announces and makes available to the receiver of the collect call automatic access to a rate quote as required by the rule. Further, if the receiver of a collect call from an inmate chooses to access the rate prompt, both parties will hear the quoted rate.

FINDINGS

THE COMMISSION FINDS:

1. Verizon Northwest Inc., a Washington corporation, is a public service company subject to the jurisdiction of this Commission under the provisions of chapter 80.28 RCW.
2. Verizon's request for a permanent waiver of that portion of the rule requiring access to automatic rate disclosure from the party originating the operator-assisted (collect) call, when that call originates from an inmate phone at a correctional facility, is reasonable to comply with the company's and correctional facilities' concerns for protection of the public. Verizon must make the verbal disclosure option available to the person receiving the call (i.e., the recipient of a collect call from an inmate), who would ultimately incur the cost of the call.

ORDER

The Commission grants Verizon's request for a waiver of WAC 480-120-141(2)(b), only as it applies to collect calls from inmates at correctional facilities, only as it applies to the originating, not the receiving, party, and only so long as the alternative proffered by Verizon and described in this Order remain in effect.

DATED at Olympia, Washington, and effective this 9th day of August, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION


MARILYN SHOWALTER, Chairwoman


RICHARD HEMSTAD, Commissioner


WILLIAM R. GILLIS, Commissioner