

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rule-Making
Proceeding Related to Line Extension
Tariffs – WAC 480-120-071

DOCKET NO. UT-991737

**Comments of
Public Counsel
Attorney General of Washington**

March 14, 2000

Public Counsel files these comments in response to the Commission's February 18, 2000 Notice of Opportunity to File Written Comments. We look forward to working with Commission Staff and all stakeholders during the entirety of this process and continuing the valuable discussions that began at the March 7, 2000 workshop. Underlying Public Counsel's comments are a general approval of the proposed changes to the rule. Many of the concerns expressed at the March 7th workshop are reiterated here for purposes of preserving the record in this rulemaking proceeding.

WAC 480-120-071 Line Extension Tariffs.

Section (1) – Extension of Service

The current proposed rule utilizes the “urban growth area” standard which appears to have been adopted from the Growth Management Act (GMA - Chapter 36.70A RCW). Public Counsel is concerned that the use of this term will result in an uneven application of the rule given the sometimes significant differences in the manner in which the various counties and municipalities in Washington have implemented the GMA. Public Counsel would also note that significant litigation on this issue has been ongoing since the inception of the GMA and shows no prospect for ending soon. Public Counsel would recommend the Commission consider using different standards for what is urban and what is rural. If the Commission is unable to settle on any other standard it may wish to consider applying the existing “base rate areas” for this purpose.

Has the Commission considered whether there will be a clear point in time where enough facilities are deployed, even outside traditionally urban areas, such that line extensions should revert to the standard rules? While Public Counsel supports the proposed revisions to this rule, the Commission should consider whether there will be a time and a place where the public policy goals of extending service to unserved communities and individuals in Washington will have been met and whether the Commission should consider articulating a standard in that regard. It is also likely that at some time in the future the density or development in a particular area may make the application of the rule inappropriate.

Public Counsel supports the concept developed in subsection (B) of allowing wireline

companies to enter into agreements with wireless companies to provide reasonably comparable basic service to customers where wireless service will achieve the result desired at a lower cost to both the consumer requesting service and to all ratepayers. Public Counsel would emphasize that in determining whether wireless service is “reasonably comparable” to wireline service the Commission should consider whether the wireless service offered meets the requirements of RCW 80.36.600, the quality of wireless service available (including the percentage of the time a consumer is able to obtain a dial tone with wireless service from his or her home when wireless service may be unreliable due to geographic or atmospheric conditions), whether unlimited local calling is being offered, the cost to the consumer of necessary home equipment to use the wireless alternative (significantly higher than wireline telephones), and the monthly cost to the consumer of the wireless alternative offered by the company.

At the workshop on March 7, 2000 Sprint Communications offered a proposed subsection (C) that would require evidence of permanence of the dwelling before extension of service is required. Public Counsel believes that while it is reasonable for the company to have some assurance that the consumer requesting service will be a customer for more than a short time, the company should also be required to consider evidence of a history of residence at the requested location or an indefinite intent to remain, regardless of the form of the residence. These factors should be alternatives to construction permits when considering whether extension of service is required. This is distinguishable from Sprint’s current proposal of a permanent structure requirement. So long as a consumer is complying with state law regarding their habitation and are able to demonstrate either a history of residence at the location or an indefinite intent to remain, the line extension provisions of this rule should apply.

Section (2) – Service Extension Charge to Applicants

Public Counsel supports the proposed individual repayment plan which would allow for recoupment of costs up to forty (40) times the consumer’s basic monthly service rate or some variation thereof. This proposal strikes a reasonable balance between requiring an individual to cover the cost of their line extension and spreading the financial burden of expanding the telecommunications network in unserved areas amongst all ratepayers.

Public Counsel recognizes that there can be significant administrative burdens in recovering line extension charges from consumers who are benefiting from a line extension made during the previous five years. Public Counsel supports the proposed formula for recovery by the incumbent local exchange company since it strikes a balance between the costs incurred by those directly benefited from a line extension placed within the last five years and all ratepayers collectively. However, Public Counsel would suggest that companies not be permitted to recover the remainder costs of a line extension (the amount not covered by the 40X formula) until five years after the line extension was first placed into service to ensure that those who benefit directly from a given line extension bear the costs associated with it before the remainder is recovered from other funding sources or passed on to all ratepayers. Any other method that does not wait five years will inevitably result in overcompensation to the companies or a very complicated accounting process to credit federal universal service funds, rural utility service grants, or other funding sources in addition to the ratepayers via tariff. Based upon past experience Public Counsel believes it is reasonable for the companies to carry the cost of a given

line extension for five years since recoupment from additional customers who directly benefit from a given line extension will require the company to maintain a separate accounting record for the line extension for five years in any event.

Suggested additional language for Section (2)(A)

“The company shall defer recovery of uncompensated costs attributable to a line extension until five years after a given line extension goes into service. Subsequent applicants for service who will be served by this line extension (which is less than five years old) will provide additional compensation prior to other funding sources being accessed, including but not limited to, addition into ratebase.”

Public Counsel supports the proposed provisions of subsection (B).

Public Counsel recognizes the need for a waiver provision such as is stated in subsection (C). Public Counsel hopes that the Commission will carefully consider the balance between the individual needs of an unserved consumer and the collective financial burden placed on all ratepayers.

Section (3) – Cost Recovery for Extension of Service

Public Counsel recommends that cost recovery occur in the following order: (1) from the original applicant for service who requires a line extension, (2) from all subsequent applicants served by a line extension which is less than five years old, (3) from existing access charges or alternative funding sources (Universal Service Fund rate elements, etc.), and (4) inclusion in general rates. Public Counsel would support a requirement that the company, after being compensated by the directly served customers, must avail itself of all available alternative

funding mechanisms prior to filing a tariff or rate case which would result in the remainder costs being included in the revenue requirements of the company. Companies should be required to affirm in any such tariff that all available local, state, and federal alternative funding sources have been exhausted prior to requesting inclusion of the remainder costs in ratebase.

Public Counsel opposes aggregating multiple line extension costs prior to the expiration of the five year period as was proposed by Sprint at the workshop in the language it suggested be added to this subsection.

Public Counsel strongly supports the inclusion of the “public interest” standard in Section (3) and opposes any effort to remove it.

Section (4) – Extension of Service to Neighboring Exchange Facilities

Public Counsel supports establishing some flexibility in serving customers where it would be cheaper, both for the customer and all ratepayers, for a customer to be served by a neighboring exchange (without revising the exchange boundaries). Public Counsel is concerned that the current draft of section (4) is unclear as to which “company” has control over the decision of whether an applicant for service will be served by the company within whose exchange the applicant resides, or the company which serves an adjoining exchange. This referent language must be made clearer.

As an alternative, Public Counsel would propose that companies be required to cooperatively consider which company can provide service to the customer at the lowest cost, factoring in not only the line extension but also any network reinforcement necessary to provide service. However, in so doing, companies should not be permitted to “hold back” or reserve line

pairs for anticipated customers in their exchange other than for existing, pending orders.

Section (5) – Extensions to Developments

Public Counsel supports requiring developers to work cooperatively with telecommunication companies, either incumbents or competitors, at the time the development is being constructed to minimize the cost of extending service to the consumers who will, at some time in the future, reside at that development. Public Counsel recognizes that this issue presents substantial jurisdictional and notice issues for the companies, the Commission, and developers. Public Counsel suggests that the Commission work closely with the representatives of county and municipal governments in Washington so that developers are made aware of the Commission's requirements in a timely fashion. This form of government to government outreach (and possible reflection of the Commission's requirements in municipal and county codes) will minimize the potential conflict and litigation the application of this rule could cause.

Public Counsel opposes any provision which would allow companies to refuse service to an applicant whose developer refuses to compensate a company for the costs of providing a line extension to the development. In considering revisions to subsection (5) the Commission should minimize the potential for litigation to arise as a consequence of the requirements of the rule.

CONCLUSION

In general, Public Counsel supports the revisions to WAC 480-120-071 proposed by Staff. The draft rule contain a number of worthwhile new provisions and will serve to further the public policy goals of extending telephone service to those consumers in Washington whose

telecommunications needs are currently unmet. Public Counsel is cognizant of the careful balance the Commission must strike between the costs unserved individuals must bear to obtain service and the collective burden to all ratepayers of the remainder of the costs of extending service to currently unserved consumers. Public Counsel wishes to emphasize that the collective value of the telephone network(s) increase to all consumers in Washington as more of Washington's citizens are able to join the telecommunications age.