BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re:	)	Telecommunications - Operations
	)	Chapter 480-120 WAC – Consumer Rules
Telecommunications	)	
Rulemaking	)	Docket No. UT-990146

AT&T'S COMMENTS ON PROPOSED CONSUMER RULES

AT&T Communications of the Pacific Northwest, Inc., AT&T Broadband Phone of Washington, LLC, and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") hereby submit their comments on the proposed Consumer Rules ("proposed rules"). AT&T wants to thank the Washington Utilities and Transportation Commission ("WUTC") for providing the opportunity to comment on the proposed rules in this docket. In order to efficiently address these proposed rules, AT&T's comments consist of two parts. First, AT&T offers its general observations on these rules as a whole. Second, AT&T provides comments on a section-specific basis.

GENERAL OBSERVATIONS

In reviewing the proposed rules, AT&T is struck by what appears to be an effort by the WUTC to promulgate consumer rules that are more reminiscent of an era when local and long distance services were provided solely by monopolies rather than through competitive providers offering competitive services. Instead of streamlining consumer rules to incent the development of competition and encourage consumers to benefit from the choices available to them, many of the proposed rules add costs and burdens to those carriers attempting to gain a competitive foothold in Washington's telecommunications marketplace. Many of these rules fail to recognize the choices available to end users through alternatives such as cellular services, pre-paid cards or on-going developments in

internet telephony. Service alternatives such as these relegate the applicability of these proposed rules to a smaller and smaller set of services that are also undergoing a competitive transformation.

Second, the rules as drafted, in many instances, make no distinction between ILECs, CLECs, and IXCs. If distinctions are provided they are typically only between LECs and IXCs. CLECs operate in a marketplace where ILECs have substantial market power, the ability to confound a CLEC's provision of local service, and a guaranteed rate of return. The "playing field" is not level. CLECs recognize that to retain customers they must provide competitive rates and good service or the customer will, and should, return to the ILEC. The "equal" imposition of obligations on CLECs without an acknowledgement of these disparities merely provides the illusion of equity when there is nothing equitable about the relative positions of CLECS compared to ILECs. "Competitive parity" makes sense when market power between rivals is in rough parity. Until then, CLECs should not be held to customer care standards that are more in line with those historically applied to ILECs who have provider of last resort obligations and continue to enjoy monopoly positions.

Finally, many of these rules unnecessarily impose costs, which are ultimately passed on to customers, and do little to advance or protect the public interest. In fact, application of the rules will, in many cases, serve as a barrier to entry that will undermine the ability of new entrants to compete. Costs associated with these proposed rules will increase the recoverable revenue requirement of ILECs and further reduce CLECs' operating margins. Given the current state of competition and the growing CLEC "graveyard" in Washington and elsewhere in the United States, the imposition of costs

that do little to further the public interest creates a disincentive for CLECs to participate in the market and provide investment within the state.

SECTIONAL ANALYSIS

WAC 480-120-061 Refusing Service

As drafted, this section suggests that carriers may refuse to connect with or provide service to customers for only three reasons: the installation will adversely affect service to existing customers, the installation is considered hazardous, or the applicant has not complied with state codes, county codes, or municipal codes. This section is overly restrictive and inappropriately implies that all carriers, including CLECs, have provider of last resort obligations. To the extent this section remains, it should be clarified that there are other authorized refusals of service permitted by the WUTC rules. In addition, it should be clarified that this rule is limited to residential customers. Next, it should be made clear that this section does not require CLECs to extend service beyond their existing service territory. As the Commission is aware, there are very few facilities-based competitors for residential service in Washington. AT&T Broadband is one of those. AT&T Broadband has made significant investment to provide local telephony service to residential customers in Washington over its existing cable facilities. Given that investment, investments made in other parts of the United States, the state of the economy and other factors, AT&T strenuously objects to any requirement that directs it to build facilities beyond its current footprint. Such an investment obligation should not be imposed upon CLECs and would constitute a barrier to entry in Washington. AT&T is not the incumbent provider of telephone service in its territory and such provider of last

resort obligations should not be imposed upon AT&T or any other CLEC that is competing with the ILEC-monopoly to gain customers. As is evident from the slow growth of local service competition, gaining a foothold in the local market is very difficult. The Commission should not add to that difficulty by imposing such build obligations on CLECs.

Subsection 6, as written, correctly allows a company to deny service until an applicant has paid its deposit in full; however, it does not go far enough as it allows refusal only for outstanding obligations in the "same class of service." This rule should be expanded to include "all services provided to the customer." Experience shows that if a customer has not made complete payment on a specific class of service there is a reasonable risk that they will not make payments on other services. Moreover, as bundled services continue to be introduced, it is virtually impossible to know exactly the service to which a partial payment should be applied. The most rational way to proceed is to eliminate the language that specifies "same class of service" and replace it with language that specifies "for all telecommunications services provided by the company."

The six-month payment period specified in Subsection 7 is much too long. If a customer has service suspended or interrupted for non-payment, carriers should not be required to carry the customer for an additional six-month period. It is the customer's responsibility to make payment and carriers should not be required to provide additional service and incur ongoing costs until all debts to that carrier have been paid.

WAC 480-120-104 Information to Consumers

In keeping this rule consistent with the proposed CPNI rules, companies should have thirty days to send out confirming notices and welcome letters to customers. AT&T is unable to process the necessary information and meet a ten-day turnaround.

WAC 480-120-108 Missed Appointment Credits

AT&T strenuously objects to the inclusion of these new requirements into the rules. The WUTC, upon repeated requests from the carriers, has failed to show that there is a need for such a burdensome requirement. It has not been demonstrated that there has been a marked increase of complaints for missed appointments or that customers in Washington are being harmed by the absence of such requirements in the current rules.

The WUTC should allow the marketplace to determine what types of programs carriers should offer. If customers are upset by AT&T's quality of service, the customer will not hesitate to switch back to the incumbent. If a consistent pattern of missed appointments develops with a specific company, the WUTC has the authority to order the company to implement specific performance assurance plans.

This rule fails to distinguish differences in how companies provision service. AT&T Broadband is a facilities-based CLEC providing service through a hybrid fiber coaxial cable. Unlike the incumbent carriers, all service installations and disconnects provisioned by AT&T Broadband require a technician to access the customer's premise. While not all of these visits require that the customer or customer representative be present, a combination of delays throughout the day caused by heavier-than-normal traffic, an accident or any number of incidents can, on occasion, cause a technician to

arrive at a customer's premise outside of the four-hour appointment window. In such cases, the company should have the discretion to offer an inconvenienced customer credits or other types of service offers specific to that particular situation and customer's needs. Just as not all companies are alike, neither are all situations, customers or customer's needs. This rule fails to recognize these distinctions.

WAC 480-120-122 Establishment of credit – Residential services

As drafted, this rule correctly allows for the use of credit bureau information for establishing credit for ancillary and interexchange services. The use of credit bureau information should be expanded to new applicants for local service. AT&T does not have access to a customer's payment history as the ILEC does and has no way of knowing whether or not that customer has had more than two delinquent notices in the past or if that customer has had service disconnected by the incumbent company. The use of credit bureau information would help AT&T determine the need for a deposit.

Subsection 5 requires carriers to provide customers the ability to spread deposits over a two-month period and further requires carriers to allow access to interexchange services prior to paying the full amount of the deposit. This requirement is an invitation for fraud. The purpose of a deposit is to cover charges incurred by customers who may not pay for those services. Customers who are viewed as a high-risk should not be allowed to run up toll charges prior to paying a deposit in full.

480-120-124 Guarantee in Lieu of Deposit

This rule was greatly improved by the added specification that the guarantor is "currently in good standing with the company." This provides some assurance to the carrier that there is a reasonable likelihood that the third party responsible for the payment of a deposit actually has the ability to make the required payment. Without the "good standing" requirement, there is no presumption that a deposit can be paid. In addition to showing that the guarantor is in good standing, the guarantor should be obligated to take responsibility for the full amount of an unpaid bill, not just the amount of the deposit.

WAC 480-120-147 Changes in local exchange and intrastate toll services

AT&T has found that in some cases where local exchange PIC freezes are used, they do not protect consumers as intended, but instead have been used as an anti-competitive marketing tool to protect incumbent market share. AT&T's recent experience with ILEC implementation of the current rule, WAC 480-120-139, which resulted in a complaint filed (Docket No. UT-020388) has caused AT&T to be concerned about the potential for anti-competitive behavior.

AT&T requests that this rule be taken up in a separate rulemaking proceeding so that the implications of requiring, or even allowing, companies to offer a primary local exchange freeze can be examined in detail. At a minimum, Subsection (5)(c) should be changed to include a reference to Subsections (1), (2) **and (3)** to clarify that records of third party verification must be kept for preferred carrier freezes the same as required for changes.

WAC 480-120-166 Customer complaints

AT&T appreciates the changes made in this rule regarding complaint answer time and company communication with the complaining customer. These changes make the rule workable for the company and will result in greater satisfaction and complete resolution for the customer.

WAC 480-120-172 Discontinuance of service-company initiated

Subsection 1(c) states that a company may only refuse to restore service to a customer who has been discontinued twice for deceptive practices. This is an extremely onerous requirement. There is no reason why a LEC should be under an obligation to restore service to a customer who has obtained that service through fraudulent means. Once a LEC has conducted an investigation and discovered that a customer has committed fraud, the LEC should be allowed to disconnect the customer without notice and should not be required to reconnect the customer at all. In the case of a notification of a medical emergency, Subsection 6 requires that a LEC must reinstate service during the same day if the customer contacts the LEC prior to the close of the business day. This could be a difficult requirement to comply with, especially in those cases where a visit to the customer premise is required in order to restore service. As stated earlier, AT&T Broadband must visit the customer's premise every time service is initiated or cancelled. Allowing companies twenty-four hours for reinstatement of service is a more reasonable standard and one with which companies like AT&T can comply. In the event

that a CLEC is serving a customer by purchasing an unbundled loop from an ILEC, timeframes for reinstatement of service will depend upon ILEC service intervals.

WAC 480-120-252 Intercept Services

Successful compliance with Subsection 1 requires two elements in order to provide intercept services in the case of an error in the listed number of a customer. First, the LEC's central office equipment must be capable of providing the intercept service and second, the CLEC must own the telephone number. While the rules as written make an appropriate accommodation for the capabilities of central office equipment, the fact that a CLEC may not own the number, is one which is not acknowledged by the proposed draft. The issue here is that if the directory contains an erroneous number, and the end user is a resale customer of the CLEC, the intercept service would need to be placed on the number by the ILEC. An ILEC should be able to do this at the request of a CLEC, however, proper compliance would require activities that are outside the direct control of the CLEC that is reselling ILEC services. Moreover, in a resale environment, if the CLEC cannot charge the end user then the ILEC should not be allowed to charge the CLEC for the intercept service.

Subsection 2 relates to Company-directed number changes. This subsection, like Subsection 5, is typically a rare occurrence that would normally be associated with area code splits and other anomalous events. In the case of number plan modifications or area code splits, the WUTC has every ability in the context of an adjudicated proceeding to order affected carriers to adopt specific procedures that lessen the impacts on customers. AT&T believes that it is preferable to outline customer intercept requirements in the

context of an order in those specific instances rather than to include them in these rules. Subsections 2 and 5 should be removed from the proposed rules.

Compliance with Subsection 3 (Customer-directed telephone number change) like Subsection 1 is largely dependent upon who provides the required switching function (ILEC or facilities-based CLEC) and who owns the number. Further distinction in the proposed rule between an ILEC, a CLEC and a facilities-based CLEC (who is assumed here to have switching capabilities) is required for this to be workable.

WAC 480-120-253 Automatic dialing-announcing devices

As with WAC 480-120-254 (Telephone Solicitation), the FCC has promulgated rules in response to the Telephone Consumer Protection Act ("TCPA) that protect end users from abuses on the part of organizations that use automatic dialing and announcing devices ("ADAD"). To the extent possible, AT&T urges the WUTC to adopt those rules that cover the use of these devices. Also, in Subsection 6, AT&T recommends that ADADs be allowed to contact customers beginning at 8:00 AM rather 8:30 AM as is currently specified in the proposed rules to be consistent with federal rules.

WAC 480-120-254 Telephone solicitation

As a general observation regarding this rule, AT&T would like to remind Staff that telemarketing practices are addressed in various Federal rules and urges Staff to adopt those guidelines as it would be more efficient for multi-state carriers, such as AT&T, to comply with Federal rules rather than a patchwork of various State rules. Specifically, in subsection 3(a) rather than specify that a telemarketer must identify themselves "within the first thirty seconds," the FTC has promulgated regulations in the

Telecommunications Sales Rule that require telemarketers to "promptly" identify themselves to the called party. In fact, in Docket CC No. 92-90 the FCC has promulgated regulations in response to the TCPA regarding telemarketing practices that require identification be made at some point during the call. The Federal standards provide requirements that are acceptable to AT&T as they provide a balance that protects consumer interests and is easier for carriers to meet, especially for a carrier who has multi-state operations.

WAC 480-120-262 Operator service providers (OSPs)

The new OSP rule contemplates setting benchmarks and requiring OSP's that exceed the benchmark to offer automatic rate quotes to consumers. This new proposed rule arbitrarily sets "one-size-fits-all" benchmark rates for operator services, ignoring the fact that different types of calls are more costly to complete than others. In addition, the proposed rule would require expensive systems changes in order to provide automatic rate quotes. These system changes will further drive up the cost of these already expensive and labor-intensive services.

Currently, customers are told prior to completing these types of calls that a rate quote can be obtained for free by pressing zero**.** This new method forces a customer to listen to a rate quote whether or not the customer is interested and adds considerable expense for the OSP but will be no more effective than offering to quote the rates and letting the customer accept or reject the offer. Customers need to take responsibility for the choices they make. In today's environment, customers have many choices for their calling needs such as cellular services and prepaid calling services. AT&T acknowledges

the importance of giving customers adequate information, but feels that administrative rules should stop short of requiring expensive and competitively burdensome system changes especially when the cost far outweighs the benefit.

Should the WUTC decide to implement benchmark rates, AT&T cautions against setting actual rates in administrative rules. Rates and costs change over time. Having rates set in rule would eliminate any flexibility that may be necessary in the future. As an alternative, the WUTC could promulgate a rule requiring benchmarks to be adjusted on an annual basis by averaging the rates of AT&T, Sprint and WorldCom and adding 25%. This way, the WUTC and the industry are not locked into out-of-date benchmarks in the future, especially given the unique costs associated with providing operator services and the potential for these labor- intensive costs to increase over time.

WAC 480-120-263 Pay phone service providers

Before delving into a specific assessment of WAC 480-120-263, AT&T believes that payphone providers should be held to two standards: First, payphones should provide access to 911 services since payphones are an important piece of the public safety infrastructure; second, payphone providers must clearly and legibly provide information on rates, service providers and means of accessing them, and a statement of how to lodge complaints in the event a customer feels unfairly treated by a payphone provider or its employees. Beyond this two-part standard which reflects <u>what</u> a payphone provider must do, any rules that specify <u>how</u> it must be done will do nothing but drive up costs and create disincentives for payphone providers to continue operating in an environment where most have no guaranteed rate of return and face competitive pressure through the

proliferation of cellular phones. A review of the WAC 480-120-263 reveals that the WUTC Staff has spent an inordinate amount of energy specifying how payphone providers are to engage in business. Additionally, the rules impose a number of restrictions and conditions on payphone providers that are not necessary for the accomplishment of these two objectives.

Proposed rules that specify print type and contrasting colors (*See*, Subsection 4(a)), a one-to-one ratio of lines to phones (*See*, Subsection 5(c) and 5(d)) or the requirement found in Subsection (7) requiring that a current directory be available at every pay phone are examples of inappropriate rules that specify how service is to be provided which add costs to the providers. In the case of the directory requirement, alternative information is easily available from directory assistance services, and AT&T's experience is that many site owners do not want directories at their pay phones due to design and aesthetic reasons, and those that do want them have to deal with ongoing vandalism as the directories are frequently ripped apart or removed entirely.

While these rules regarding how are clearly problematic in that they add costs, rules such as those found in Subsections 5(f) and 6 limit the ability of a provider to control fraud over its phones since the provider can only restrict usage at payphones when a local jurisdiction or government agency submits a request to the WUTC. For example, in other states AT&T currently inhibits the dialing of unlimited digits in certain payphone locations, and does not allow incoming calling to prevent fraud and criminal activity. The WUTC rules would make these precautions very burdensome, making it more difficult to inhibit fraud and criminal activity. Rather than seeking to regulate these business decisions, the WUTC should rely on the Payphone Service Providers' ("PSPs")

natural incentives to balance convenience to its customers with the suppression of fraudulent calls and illegal activities at its payphones. The combination of these specific rules creates an environment that is not at all conducive to payphone operators. One set of rules adds costs, the other set of rules limit the ability of a payphone operator to stem losses from fraud and discourage criminal activities. As with other sections of these proposed rules, WAC 480-120-263 attempts to treat competitive providers in the same manner in which the WUTC has regulated incumbents who have a guaranteed recovery mechanism that supports their obligations as Provider of Last Resort. No such guarantees exist for competitive payphone providers.

CONCLUSION

AT&T encourages the commission to carefully consider the proposals provided herein. These proposed revisions have been carefully balanced to provide the consumer protections AT&T believes the Commission was attempting to accomplish without undermining the development of competition in Washington through the imposition of burdensome regulation, administrative obligations and costs.

Respectfully submitted this 27th day of June 2002.

AT&T COMMUNICATIONS OF
THE PACIFIC NORTHWEST, INC.,
AT&T BROADBAND PHONE, LLC. AND
AT&T LOCAL SERVICES

By: _____
Cathy Brightwell
Assistant Vice President
AT&T Law & Government Affairs