BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rule-Making Proceeding Related to Telecommunications Companies – Chapter 480-120 WAC	DOCKET NO. UT-990146

Comments of
Public Counsel
Attorney General of Washington

June 27, 2002

Public Counsel files these comments in response to the Commission's May 30, 2002, Notice of Opportunity to Comment on Proposed Rules in this docket. Although we support many of the rules, we continue to have very strong concerns with certain rules. In particular, we urge the Commission not to adopt the following four rules in their current draft form:

- 480-120-122 Establishing credit – residential services
- 480-120-105 Company standards for installation of access lines
- 480-120-104 Information to consumers
- 480-120-061 Refusing service

Our comments today focus on the four draft rules listed above, as well as issues surrounding company response to and tracking of consumer complaints.

480-120-122 Establishing credit – residential services

Public Counsel continues to object to this draft proposed rule in the strongest possible terms. The proposed rule would allow LECs, for the first time, to use credit reports as a means of determining whether a consumer represents a credit risk for the company. We believe that the proposed rule would harm consumers, and represents a weakening of existing consumer protections. Insufficient evidence exists in this rulemaking record to justify the Commission making such a major policy change in the basis for a local exchange company (LEC) to collect a customer deposit.

In our comments filed in this docket on November 5, 2001, and March 25, 2002, we described several concerns with the proposed establishment of credit rule. Today we incorporate those comments by reference and summarize our concerns.

- **Credit reports are notoriously inaccurate and difficult to correct**. Issues surrounding credit reports are a major source of complaints to the Consumer Protection Division of the Attorney General's Office. Consumers who file complaints with the Attorney General typically experience one or more of the following problems: (1) they were denied credit based on erroneous information in one or more of their credit reports, (2) they tried to get the disputed items corrected and were unsuccessful, or (3) they did not receive a response to their initial request to procure a copy of their credit report to determine why they were denied credit. In a two-year period, from 1998 to 2000, the number of consumer complaints filed with the Attorney General's Office related to one of the "Big Three" credit agencies (Equifax, TransUnion, and Experian) increased by 48%.
- **Credit reports are a poor predictor of credit worthiness vis-à-vis utility bills.** A review of customer deposit rules conducted for Commission Staff in 1994 concluded that the use of third-party supplied credit information as a basis for making utility deposit decisions does not represent sound public policy. In that study, Roger Colton states: "Substantial research has found that consumers tend to pay their utility bills before paying nearly any other outstanding credit (other than rent or mortgage obligations). As a result, information from a credit

reporting agency that indicates a lack of creditworthiness based on non-utility transactions does not provide useful information as to a customer's likelihood of paying a home utility bill."[1] Colton's review cites research studies that show customers tend to pay their home energy and telephone bills first and their charge accounts last. Furthermore, the use of credit reports disadvantages those segments of the population that do not have a high credit rating simply because they choose not to use credit cards. (Please see the attached article, which addresses this issue).

- **The rulemaking record does not contain sufficient evidence to justify this change**. The purpose of a deposit payment is to reduce the amount of uncollectibles. In our comments filed November 5, 2001 and March 25, 2002, we recommended that prior to adopting a new rule that would provide for a major policy change regarding on what basis a LEC is entitled to collect a customer deposit, the largest LECs should provide data regarding uncollectibles in Washington state. That information would help us determine whether a significant modification of the current rule is justified. LECs have not provided that data and no such analysis has occurred as part of this rulemaking.

- **A two-tiered system for collecting deposits is overly complicated and likely to cause consumer confusion**. The proposed rule would create a two-tiered system for determining whether a customer should pay a deposit for residential local exchange service that is administratively burdensome and confusing to customers. Customer confusion is already a major problem in telecommunications. Establishing a system where two different credit worthiness rules apply to services within the same package further exacerbates this problem. For example, when a consumer contacts the LEC and requests a basic phone line plus call waiting, will the LEC first examine credit worthiness for ancillary services? If the LEC determines the applicant poses a credit risk for ancillary services, will the customer service representative then determine if the applicant is able to establish credit for basic services? Will the LEC explain to consumers that they are conducting two types of credit checks in these situations? It is not clear how LECs would implement this two-tiered system.

[1] Colton, Roger. *Customer Deposit Demands by US West: Reasonable Rationales and the Proper Assessment of Risk*, Prepared on behalf of the Staff of the Washington Utilities and Transportation Commission, Docket UT-930482, August 1994, page 4.

Large numbers of customers choose at least one ancillary service, such as caller ID or call waiting, as part of their local telephone service. The proposed language in subsection (2), which would allow LECs to use "any reasonable means" to establish credit for customer of ancillary services, could therefore have the effect of applying to significant numbers of consumers. We are concerned that customers may not be adequately made aware of the option to avoid a deposit by choosing a basic service package, particularly given that telephone company customer service representatives are encouraging customers to purchase ancillary features or custom calling packages.

- **This is a "rollback" of existing consumer protections.** Currently, when a customer orders local service with ancillary features, a deposit can only be required if they do not establish ability to pay under the current rule. Under the new proposal, a customer who could have previously established credit worthiness based on employment history, would now be subject to review of a credit report to get the same package of service.
- **Ancillary services are only nominally competitive**. The argument that different standards are justified for ancillary services because they have been classified as competitive ignores the practical reality that residential local telephone services, both basic and ancillary, are provided almost exclusively by regulated monopoly providers as a package. The reality is that few customers purchase local service from Qwest or Verizon, and voice mail or call waiting from a second provider. There is certainly no evidence in this record that a vibrant competitive market exists for ancillary services.

In summary, Public Counsel is not yet persuaded of the need to substantially modify the existing rule pertaining to the establishment of credit. We are not yet convinced of the need for a major revision of the existing rule. Indeed, given that issues related to credit reports are a significant area of consumer complaints to the Attorney General's Office, Public Counsel is concerned that in seeking to address perceived shortcomings with the existing rule the Commission may adopt a new rule that generates even more problems and consumer complaints.

We recognize that the proposed rule would make it easier for consumers to establish credit for basic local service. We believe there needs to be more empirical evidence that the framework set forth in subsection (3)(a) through (e) of the existing rule (WAC 480-120-056) makes it difficult for certain groups of customers to establish credit. Our first recommendation, if the Commission wishes to pursue this option, would be to adopt that standard across the board, for basic and ancillary services. As a second choice, we would recommend retaining the existing rule. Our third recommendation—if the WUTC chooses to make a distinction between the criteria used to evaluate whether a deposit is required for basic local services versus ancillary services—would be to adopt the new standard for basic service but retain the existing framework in the establishment of credit rule (WAC 480-120-056) for deposits for ancillary services. If a demonstrated problem exists with the ability of customers to establish credit and obtain basic service under the current rule, then our first or third options would address that problem.

480-120-105 Company performance standards for installation or activation of access lines

Public Counsel opposes this proposed rule because it represents a weakening of the existing performance standard regarding installation or activation of access lines, as set forth in WAC 480-120-051, in that performance would be measured on a *statewide* basis rather than on an *exchange level* basis. We are concerned that establishing a statewide performance standard instead of an exchange-level standard would remove an important incentive that LECs provide an adequate level of service quality to all areas of the state. Our concern is that LECs could remain in compliance with a statewide performance standard by meeting the standard in its large urban exchanges while providing a level of service to its smaller rural exchanges that falls below the current standard.

We are pleased that in other respects, this proposed rule improves upon and corrects inconsistencies in the existing rules related to performance standards and reporting of held orders. In particular, we strongly support the clarification related to how held orders should be tracked (as they are received), and the fact that the proposed rule includes a 100% standard for completion of orders. These are positive modifications to the existing rules that should allow for improved tracking of held orders.

480-120-104 Information to Consumers

We are pleased that subsection (1)(b) of the proposed rule has been modified so that the "welcome letter" new consumers receive would include information about the rates for each service being provided to the customer. This is a significant improvement that will make the welcome letter more helpful to consumers.

Our chief concern with this rule in its present form however, is that the welcome letter is not required to include the "consumer information guide." Public Counsel strongly recommends that the information in the "consumer information guide" should appear in the welcome letter sent to applicants for new service, as well as in the directory. As currently drafted, subsection (1)(d) of the proposed rule would allow local exchange carriers to choose to provide this information in the welcome letter or in the directory (pursuant to WAC 480-120-251). This means there would be no guarantee as to when the customer would actually receive this information because the rule pertaining to directory service (480-120-251) does not contain a requirement outlining when customers should expect to receive the directory. We believe the consumer information outlined in subsection (6)(a) through (f) of 480-120-251, such as the disconnection policy and how a bill becomes delinquent, is extremely important information that should be easily accessible to consumers.

We encourage the Commission to modify this rule, as well as 480-120-251, so that the consumer information guide would appear in both the welcome letter and the directory. We note that if this rule goes into effect, existing customers would not receive a "welcome letter," and thus the consumer information guide should continue to be included in the directory, as a resource for all customers. Given that most companies at the October 2001 workshop indicated that they do send a welcome letter to new customers, we do not think that including the consumer information guide in both the welcome letter and in the directory represents a significant new burden for the companies. As an alternative, if the Commission does not want to require the inclusion of the entire consumer information guide in the welcome letter and the directory, we recommend that at a minimum, the welcome letter should refer to the specific types of information that can be found in the directory (e.g. the disconnect policy, how a bill becomes delinquent, etc).

In addition, Public Counsel recommends that subsection (1) of the rule should also require notice to applicants and customers that basic service may not be terminated for non-payment of other services. Public Counsel also believes that subsection (1) should require companies to inform applicants and customers about any service quality guarantees the LEC may be required to offer pursuant to WAC 480-120-108 and 109, including the $50 missed appointment credit and credits for the LECs failure to install or activate service by the commitment date. Finally, we also recommend that companies inform applicants and customers about the company's procedure for handling repairs and service interruptions. This information should include the remedies and credits available to a customer for out of service conditions, as set forth in the proposed rule 480-120-164.

480-120-061 Refusing Service

Telecommunication services are essential services that should be refused only under the most extreme circumstances. Public Counsel strongly objects to language in section (6) of the proposed rule. Specifically, we object to the following provision: "A company may deny service at an address where a former customer is known to reside with an overdue, unpaid prior obligation to the same company for the same class of service at that address until the obligation is paid…." This provision is contrary to the public policy goals of providing universal service and undermines the ILEC's obligation to serve those customers within its service territory. At a minimum, we suggest that the LEC has the burden of proving that a fraudulent act is being committed, and suggest language recently adopted by the Commission in WAC 480-100-123(4) and WAC 480-90-123(3) in the electric and gas rules:

> The utility may not refuse to provide service to an applicant or customer because there are outstanding amounts due from a prior customer at the same premises, unless the utility can determine, based on objective evidence, that a fraudulent act is being committed, such that the applicant or customer is acting in cooperation with the prior customer with the intent to avoid payment.

Consumer Complaints and a Telecommunications Consumer Bill of Rights

Public Counsel supports the concept advanced by the Telecommunications Consumer Education Consortium (TCEC) in comments filed March 13, 2002, related to the tracking of consumer complaints. In those comments, the TCEC proposed a new rule that would establish company performance standards related to the processing of complaints and disputes. For the past three years, complaints related to the telecommunications industry have been the largest source of complaints filed with the Consumer Protection division of the Attorney General's Office. A common theme in those complaints is that when the customer attempted to solve the problem with the company directly, they experienced very poor customer service. We believe

the proposal by the TCEC has merit and we encourage the Commission to consider adopting such a rule.

In addition, Public Counsel supports the concept of a "Telecommunications Consumer Bill of Rights" that has been advanced by the Seattle Telecommunications Project, and we encourage the Commission to include a consumer bill of rights as part of the telecommunications rulemaking.