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Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Docket No. UT-990146 – Comments on Proposed Rules

Dear Ms. Washburn:

This letter will constitute the comments of the Washington Independent Telephone Association (WITA) on the rules as contained in the May 30, 2002 Notice of Opportunity to Comment on Proposed Rules.

INTRODUCTION

A great deal of hard work by both the Commission and the industry has gone into bringing the drafts to their current state of development. WITA's members especially appreciate the attendance and participation by the Commissioners at several of the workshops concerning the proposed rules.

While substantial progress has been made on the rules, as these comments will demonstrate, there are still additional modifications that should be made to the draft rules. The organization of these comments will be to address the rules in numerical order. Where WITA has a comment on a proposed rule, the citation to the rule will be put on the left-hand margin of these comments and then the substantive comment will follow. Where possible, WITA has provided suggested language changes.

COMMENTS

WAC 480-120-019: While WITA does not have a suggested change to this rule, WITA does want to take the opportunity to thank the Commission for maintaining the standard previously contained in WAC 480-120-500(3). The language of the new rule is slightly different from the old rule, but, from WITA's perspective, the substantive effect remains the same.

WAC 480-120-061: WITA asks that the Commission add to the rule, as additional grounds for refusal to provide service to an applicant, language that when the applicant has not complied with Commission rules and company tariffs or price lists, service may be denied. These standards would be in addition to the applicant's failure to meet state, county or municipal codes now referenced in the draft. Certainly, a person that is not in compliance with Commission rules should not be able to force the company to provide service. In addition, since a company's offering of service is contained in its tariff or price list, then a company should not be required to serve an applicant that does not meet the conditions of service contained in such tariff or price list.

In addition, there is confusing language in the rule which refers to "other existing customers." Since the comparative reference is to the "applicant," by definition there are not "other customers" since the applicant is not yet a customer.

To correct these two items, WITA suggests that subsection (1) be rewritten to read as follows:

> A company may refuse to connect with, or provide service to, an applicant, when service will adversely affect the service to existing customers, the installation is considered hazardous, or the applicant has not complied with Commission rules, company tariff or price list, or state, county or municipal codes concerning the provision of telecommunications services. Examples of state, county or municipal codes concerning the provision of telecommunications service are the state building code and local electrical codes.

In addition to the foregoing, some of WITA's members have expressed concern with proposed WAC 480-120-061(3)(a). What does the Commission have in mind as to the five sources of identification? In addition to driver's license, State of Washington picture ID and passport, what does the Commission believe should be included on the list of acceptable sources of identification?

Further, in proposed WAC 480-120-061(3)(b), there is a reference to "company-listed business offices and payment agencies." It is not clear what is meant by the term "company-listed." The rule would read more clearly if the term was changed to "Company business offices and payment agencies. . . ."

Under proposed WAC 480-120-061(6), service can be denied where there is evidence that the person requesting service lived at the address while the overdue, unpaid prior obligations were incurred "and helped incur the obligations." For some companies, rotation of roommates is a very significant problem. The "helped incur the obligations" standard is vague and very difficult to apply. WITA's members ask that the language "and helped incur the obligations" be deleted.

For customers that have small past due obligations, a minimum six month period of time to repay the obligation seems overly long. Therefore, WITA suggests that the first sentence of subsection (7) be amended to read as follows:

> Applicants, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, a one-time option to pay a prior obligation over not less than a six-month period; provided, that if the amount past due is one hundred dollars or less, the one-time option shall be not less than a three-month period.

<u>WAC 480-120-103</u>: It is WITA's suggestion that the words "When an application is accepted" be added at the beginning of proposed WAC 480-120-103(1)(b). The obligation set forth in the draft rule arises only after the application is accepted. This same concept should be included in subsection (2). Specifically, the second sentence of subsection (2) should be modified to read "Within seven business days of the date the application is accepted, the company must. . . ."

In subsections (3) and (4), the term "customer" is used. However, at that stage the person or entity is an "applicant" not a customer.

<u>WAC 480-120-104</u>: Subsection (2) of this proposed rule requires a welcoming letter in each instance of a new service or a change in service. The SBEIS states that there is no economic impact from this proposed rule.[1] However, that is not correct. Companies that do not engage in this practice today will incur the cost of these mailings, the cost of creating and implementing new processes, and

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[1] The SBEIS appears to have its comments mismatched to the rules. Apparently, the Commission's intent is to state there is some impact, but it is offset by other factors. The Commission does not identify the extent to which the offsetting factors actually exist.

devoting customer service representatives' time to these activities at the expense of other activities. In addition, there has been no demonstrable need made on the record in this proceeding of the benefit of such a required practice.

In particular, the industry comments have been concerned about the requirement in subsection (2)(b) that the rate for each service be set forth in the "welcome letter." That requirement can cause confusion and harm where clerical errors may be made. In addition, if the customer is subscribing to toll service, and in particular international service, it may be very difficult to comply with this proposed rule. It appears that a complete rate schedule would have to be sent to each customer setting forth the calling rate to each international destination.

For many small companies, including the rates and information related to interexchange carriers in the welcome letters is a problem. For some companies that use an automated process, it will require manual changes for each welcome letter. For example, TDS uses an automated process which would now have to be manually modified for Washington for each new customer or change in an existing customer's service. WITA requests that the requirement to include the rates and interexchange carrier information be deleted.

WAC 480-120-105: WITA asks that subsection (3) of this section include force majeure acts as exceptions to the timelines set forth in subsection (1). While WITA's members provide excellent service to their customers, the use of percentages to determine violations of timelines can mean a small company cannot conform to the Commission's rule standards. Most often, this will occur with a company with a relatively few number of existing access lines (for example, a company that currently serves 1,000 lines). In these cases, a company may receive only one to five applications for service within a month. If there is a situation where there are severe weather conditions, as sometimes occurs in eastern Washington during the winter months or even in western Washington during equally unusual weather conditions, the company may not be able to fulfill all of the orders within five business days. The simple application of percentages will place the small company in violation of the rule. Just as a force majeure will allow a company to not have to provide customer credits (proposed WAC 480-120-107(3)), a force majeure should also provide protection from a rule violation.

In addition, WITA suggests a minor language change to subsection (1). WITA suggests that the introductory clause read as follows: "Except as

provided in subsection (2) of this section, when an application meets the requirements of WAC 480-120-103 (Application for service), the following. . . .”

WAC 480-120-107: WITA has previously advanced the argument to the Commission that the Commission lacks the authority to impose these requirements and that such requirements constitute rate setting by rulemaking. WITA will not repeat those arguments here, but does still believe that those arguments are well founded.

In addition to legal issues, from a policy perspective, it appears to make sense to view customer credits as an area in which companies should be allowed to compete for a customer’s service based upon service distinctions.

This rule would require a company to provision service within seven days of the order date, with a couple of exceptions set forth in the rule, in order to avoid a credit for a missed installation appointment. Some companies set installation dates on less than seven days. In those instances, a company may set a date, for example three days from the order date, and subsequently realize that workloads (for example a cable cut the next day may interfere with the company’s ability to install service) will prevent it from meeting the original install date. However, the company is able to notify the customer and reschedule the service for two days later than originally scheduled. This would still be within seven days of the order date. However, as drafted under the rule, a customer credit would be due even though the service was installed within seven days of the order date. In order to avoid installation credits, this means that the company’s behavior would be modified to extend the install date out to seven days rather than a shorter period of time. This would actually decrease service to the customers. To avoid this problem, WITA suggests that an additional sentence be added to subsection (3) to read as follows: “Service credits are not required if the LEC provides the customer twenty-four hours advance notice of a change in the installation or activation date and the new installation or activation date is within seven business days of the order date.”

Finally, there appears to be a problem with the last sentence of proposed subsection (3). That sentence would require a company to have contacted “as soon as practical” the appropriate authorities to request applicable utility location services and permits. However, it is not good business practice to call for locates very far in advance of the date on which construction is needed to occur. For example, where construction is required, it may be a month before that construction can actually be performed or it may be that the project is large enough that it will take two weeks of actual construction activity to complete the construction. Calling for locates too quickly can mean that the

locates are gone by the time the construction crew arrives. WITA suggests that this sentence be deleted.

WAC 480-120-128: WITA requests that the time period contained in subsection (2)(c) be extended to thirty days. Fifteen days is not realistic for the processing of customer information and refunding a check. Normal processing of this payment requirement would need to fit within the company's normal invoice processing time periods and may require up to thirty days, depending upon the company and the time within the month the customer disconnects.

WAC 480-120-133: WITA suggests that subsection (1) be modified to impose the requirement only during normal business hours. Because the rule goes on to define an automated call answering system as requiring referral to a live operator, this proposed rule would require small companies to have employees work nights and weekends. Many small companies do use an answering service for calls outside of business hours. However, the answering service cannot provide substantive information to a customer who calls. All the answering service can do is take a message. Since the live answering service can only take a message, it does not seem reasonable to require that a company go to the expense of maintaining a live answering service outside of normal business hours. Small companies do have emergency numbers that are available, that would place the customer into contact with a person who is on call outside of normal business hours. However, it would be an unreasonable burden to require that person to respond to every routine call, as well as emergency calls.

At least one of WITA's members uses an automated call system where the customer is placed in queue, and is not given an opportunity to hit a button speaking with a live person or is not given a default that says that if you do not exercise certain options, you will be routed to a live person. All customers are routed to a live operator and the response time meets the Commission's rule. However, the mechanism that is used does not quite meet the language of the proposed rule, although it seems to meet the spirit of the rule. Is it the Commission's intent that if a live operator is accessed by the customer on average within sixty seconds, then the mechanism that is used in the automated calling system is left to company discretion?

WAC 480-120-147: First, a relatively minor matter: the second paragraph of subsection (1)(b) refers to "sales." It would be more appropriate if the term were "preferred carrier change."

Please note that there is not a separate PIC for international toll. The international carrier is the same as the interstate carrier. Therefore the reference to international toll should be deleted from subsections (2) and (5).

WAC 480-120-161: The language used in subsection (4)(a) is not logical. As written, it states that bills can only include charges for "services that have been requested by and provided to the customer or requested by and provided to other individuals authorized to request such services on behalf of the customer." What if service is provided to the customer's minor children? Must such charges be excluded from the bills? What if the charges are for services provided to guests of the customer? Such services have not been "requested by and provided to the customer." They may have been requested by the customer, but are provided to a third party. WITA suggests the language "and provided to" be deleted.

There is a concern that some companies may not be able to comply with subsection (7). If a customer orders a large number of vertical services, some third party billing firms used by small companies do not have a format in place to list the rates for each individual service. Relatively expensive programming changes would be required to comply with the rule.

WAC 480-120-167: WITA suggests that the reference to "two days" in the third paragraph of this proposed rule be changed to "two business days."

WAC 480-120-172: The language related to medical emergencies in subsection (6)(b) has been changed from the standard of "significantly endanger the physical health of the subscriber or member of the household" to "aggravate an existing medical condition." What does the Commission mean by "aggravate an existing medical condition"? If a person occasionally suffers from migraines and the thought of losing his or her telephone service might increase the frequency of the migraines, is this something which will "aggravate an existing medical condition"? If a person suffers from psoriasis and cannot use the telephone to order prescription refills, does that then "aggravate an existing medical condition"? What is the basis for the change in the standard used in this proposed rule? WITA suggests that the language in the existing rule be retained.

Further, there appear to be a number of inconsistencies in this subsection. Subsection 6(a) provides for a five-day grace period. However, 6(e) refers to a ten-day grace period. Language in 6(d) refers to one-sixth of the delinquent amount and 6(e) refers to twenty-five percent.

Subsection (7)(d) adds a new requirement that not only must the company make two calls, the company must follow that up with another attempt using any business or message number the customer has provided. What is the rationale and basis for this new requirement? WITA's members do

not remember this requirement being raised in the workshops. WITA asks that the Commission not adopt the new requirement.

WAC 480-120-201/209: WITA has already provided comments on these rules and rather than restate those comments, incorporates those comments by this reference.

WAC 480-120-251: Subsection (1) of this proposed rule refers to cellular telephone numbers. Cellular numbers are only a portion of the wireless numbers that are available. Perhaps the defined term of CMRS should be used. See proposed WAC 480-120-021. The same term ("cellular") appears in subsection (3).

WAC 480-120-302/999: These two rules taken together would have the Commission adopt the FCC regulations under Part 32 as they existed on October 1, 1998. Why adopt rules that are nearly four years out of date? For example, under Part 32, 47 CFR 32.25 related to booking of unusual items and contingent liabilities was not added until March 28, 2000. As another example, the reference contained within proposed WAC 480-120-302(3)(g) to Part 32 Section 32.2000(b)(4) is a reference to a rule that no longer exists. The current version of 47 CFR 32.2000 does not contain a subsection (b)(4).

WAC 480-120-311: The proposed language in subsection (1)(a)(i) retains the reporting requirement for the Washington Exchange Carrier Association that was used for the old access filing mechanisms. This requirement is not needed under the WCAP plan previously approved by this Commission. WITA suggests that the requirement be deleted.

WAC 480-120-312: WITA's members do not remember discussing this proposed rule at any of the workshops. What is the purpose of this proposed rule? What is the basis and need for this proposed rule? Why does the Small Business Economic Impact Statement indicate that there is no substantive change when it appears that this is a new rule without a counterpart in existing rules? Without discussion of the rule's purpose, effect, implementation and other practical consequences of adopting such a rule, WITA suggests that the Commission not move forward with the adoption of proposed WAC 480-120-312 at this time.

This also raises a question of what other substantive concepts may be included within the proposed rules that were not discussed at the workshops. If there are substantive changes that are not brought to the public's attention, it raises a serious question about the efficacy of the workshop process. Are

there other substantive additions that have been made that were not discussed in the workshops?

Finally, a comment on the Small Business Economic Impact Statement (SBEIS) is in order. First, at page 2, the SBEIS states "Even a small telecommunications company typically has more than the fifty employees that define a 'small business' under the Regulatory Fairness Act." What analysis did the Commission use to determine what constitutes the number of small telecommunications companies? Perhaps the Commission is referring to competitive local exchange companies (CLECs), as well as incumbent local exchange companies (ILECs). However, many of the rules apply only to ILECs. Of WITA's members, at least eight (even counting affiliated companies together) have fewer than fifty employees. In addition, WITA is aware of two non-member ILECs that have fewer than fifty employees – St. John Cooperative Telephone Company and Skyline Telephone Company.

Secondly, and more importantly, the Commission speculates in the SBEIS as follows: "It may be that companies did not respond [to the request for information] either because they were not small businesses or because, under the cost-based methods used by the Commission to set prices, any impact of the rules would not ultimately be borne by the company itself." This speculation as to the motives of the small companies is not well founded. In the past, WITA members have gone to tremendous expense and effort to provide detailed information for the SBEIS related to specific rules. The small companies' experience is that the Commission or Commission Staff substantially discounted the company-provided information in favor of its own analysis. Having had the experience in the past of spending the time and money to make thoughtful, detailed information available which was not given serious consideration, the small companies are not inclined to incur that cost and expense again.

CONCLUSION

Thank you for the opportunity to comment on the proposed rules.

Sincerely,

RICHARD A. FINNIGAN

RAF/km
cc: Terrence Stapleton
WITA Members