BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re:	) Telecommunications Companies,) Chapter 480-120 WAC
Telecommunications Rulemaking	) Docket UT-990146)
	) Tariffs,) Chapter 480-80 WAC
	) Registration, Classification and Price Lists,) Chapter 480-121 WAC

COMMENTS OF AT&T AND MCI WORLDCOM

AT&T Communications of the Pacific Northwest, Inc. ("AT&T") and MCI WorldCom, Inc. ("MCIW") submit these comments pursuant to the Notice of Opportunity to Submit Comments dated December 23, 1999 and the Notice of Extension of Date to File Written Comments dated January 12, 2000.

I.SUMMARY

The goal of these revisions should be to promote the development of competition in the local exchange marketplace in order to best serve the consumers of this state. The rules should clearly distinguish between competitive providers—whose conduct will be disciplined by the market—and the incumbents. The Commission must continue to regulate the conduct of the incumbent local exchange companies until such time as competition will do so.

The rules must also recognize that competitive providers are dependent upon the incumbents for facilities and services. Retail service quality rules are only necessary for

the incumbents. Competitive providers must meet or exceed these standards in order to win customers. Penalizing the competitive providers for delays or provisioning failures in fact attributable to the incumbents will insulate the guilty party. Further, such penalties offer the incumbents yet another opportunity to increase the costs of competitors, impairing the development of competition.

II.COMMENTS

A. Revisions to the Rules Should Distinguish Clearly Between the Obligations of the Incumbents and Those of Competitive Providers.

AT&T and MCIW submit that the revisions to the rules should protect the consumers of this state by promoting the development of competition. Four years after the federal Telecommunications Act, local markets in the State of Washington are still not open to irreversible competition. Instead, the incumbents have demonstrated both an ability and a willingness to impede entrance by competitive providers. Obtaining unbundled network elements from U S WEST Communications, Inc. ("U S WEST") and from GTE Corp.—one of the essential modes of promoting facilities-based competition—has been mired in litigation and impaired by the slow implementation of access to operational support systems.

The revised rules need to recognize this reality of the local services marketplace. As Sprint and other commenters have noted previously, the distinction between the incumbents and the new entrants needs to be clarified through the revisions. Competitive telecommunications companies—by statute—are to be minimally regulated. R.C.W.A. 80.36.320(2). At this point in time, there has been no demonstration that the market is

not performing as it should in disciplining the conduct of competitive providers. Unless and until such market failure is established, the Commission should continue to focus its efforts upon assuring that both consumers and competition are protected from the actions of the incumbents.

The glossary (WAC 480-120-021) defines a "competitive telecommunications company" and a "utility." The latter term has, however, been removed in the proposed revisions. Companies are variously referred to as "telecommunications company" and "local exchange company" but these terms are not set forth in the glossary. The definitions from R.C.W.A. 80.04.010 should be included.

The rules must then distinguish between obligations appropriately required of all companies and those where the intent is to continue to regulate the conduct of the incumbents. For example, proposed new rule 480-120-X18, entitled "Mandatory cost changes for telecommunication companies", while appearing to apply to all providers, refers to procedures for rate filings, a requirement only applicable to the incumbents. WAC 480-120-031 is entitled "Non-competitive companies—Accounting" but the language simply refers to "companies." Careful editing can eliminate confusion.

B. The Rules Must Recognize that Competitive Providers are Dependent Upon the Incumbents for Facilities and Services.

The Telecommunications Act of 1996 directed that the incumbents unbundle their networks and provide facilities and services to new entrants in order to promote the development of competition. Certain functions are not yet efficiently performed by the competitive providers. Further, consumers would not be well served by—for example,

the publication of multiple directories. Yet, WAC 480-120-042 requires a "local exchange company" to publish a directory. Obviously, a competitive local exchange company ("CLEC") must provide its customers with directories—because customers have that expectation. But, just as obviously, the CLEC cannot "publish" those directories but will, instead, obtain them from the incumbent.

Competitive providers seeking to serve customers through the use of unbundled network elements are also limited by the quality—or lack thereof—of the facilities and processes of the incumbents. Service quality issues have long been a concern for customers of U S WEST. Witness the pending complaint of AT&T—U S WEST's single largest customer—alleging long-standing problems with missed installation due dates, excessive installation intervals and "held" orders in the purchase of exchange access. U S WEST's response is also instructive. U S WEST does not dispute that it agreed to certain performance measures as supplier to a major customer. Nor does U S WEST dispute that it is not meeting these measures (where it monitors and reports its own performance.) Instead, U S WEST maintains that these measures are not enforceable. Further, U S WEST argues that its tariffs permit this abysmal performance and there is nothing that this Commission can or should do.

. The Commission has consistently refused to impose carrier-to-carrier service quality guarantees in interconnection agreements and has yet to promulgate carrier-to-carrier service quality rules. At a minimum, these revisions need to clarify the rules that should only apply to the incumbents and not to competitive companies.

C. The Rules Intended to Assure Service Quality for Consumers Should

Not Be Utilized for Anti-Competitive Purposes.

The Commission has proposed a number of measures intended to assure that the incumbents provide quality service to consumers. *See, e.g.*, WAC 480-120-X08 (requiring service quality guarantees); WAC 480-120-051(5) (establishing order completion intervals): WAC 480-120-500 (requiring sufficient facilities to meet forecasted demands); WAC 480-120-515 (establishing network performance standards); WAC 480-120-525 (establishing network maintenance requirements). CLECs cannot satisfy many of these standards if the incumbents do not meet or exceed these standards for the facilities provided to competitors.

Again, the AT&T complaint demonstrates the problem. AT&T must order access facilities from U S WEST in order to provide AT&T's customers with service. U S WEST does not advise AT&T that the due date will not be met. U S WEST does not provide the ordered facility within the intervals set forth in its tariff. But, the customer blames AT&T—the provider it is looking to for service. Under the proposed rules, AT&T would be responsible to the customer for penalties. U S WEST—the cause of the delays—would not be penalized at all. In fact, U S WEST would benefit to the extent that AT&T must incur the costs caused by U S WEST's failure to perform. That result is contrary to the principles of cost causation long recognized by this Commission. Further, the penalty would not serve the intended purpose of providing an incentive to U S WEST to improve its behavior.

The Commission's retail service quality rules are needed only to protect consumers from the incumbents. At the same time, these rules will—by establishing customer expectations—define the standards that competitive providers must meet or

exceed in order to win customers away from the incumbents. If the CLEC cannot meet customers' expectations, customers can—and will—choose another provider. No intervention by the Commission is needed to direct appropriate conduct by the CLECs.

The service quality rules should, accordingly, apply only to the incumbents until such time as it might be demonstrated that the market has failed to discipline the CLECs. Otherwise, the rules will penalize the CLECs while insulating incumbents from the consequences of their conduct. Further, the rules as written can be used for the anti-competitive purpose of increasing costs to competitors.

D. The Commission Should Take This Opportunity to Apply Only Minimal Regulation to Competitive Providers.

Under the proposed rules, WAC 480-120-027 has been revised to refer to WAC 480-80, and the provisions applicable to competitive providers' filing of price lists and contracts have been deleted. However, competitive providers are exempt from the provisions of WAC 480-80. It is not clear what the intent is with respect to the rules for filing of price lists and contracts of competitive providers, and this ambiguity needs to be resolved. Comments addressing this area will presumably be taken at a later date. However, revisions should be focused upon easing regulatory burdens that will only serve to increase costs while failing to produce any benefit for consumers.

In WAC 480-120-056, the rules define "satisfactory credit" for residential consumers. This definition is not consistent with commercial practices. Normally, a business would obtain a credit check to make that determination. In fact, other state commissions permit companies to follow the same practice. And, the rules permit such

practices for business customers as well as for customers of interexchange companies. Again, there is no evidence that permitting CLECs to adhere to reasonable commercial practices will harm consumers. In fact, credit bureaus provide reports on customers' credit histories with respect to utility payments, separate and distinct from customers' credit histories for other types of products and services, which would give telecommunications providers access to relevant information regarding customers' utility credit histories.

WAC 480-120-101 establishes procedures for responding to customer complaints. Such processes are essential where customers have no choice of providers. However, the normal response of an unhappy grocery store shopper, dry cleaners' patron or Internet service provider's customer is not to file a complaint but to "vote with their feet" and go elsewhere.

Requiring CLECs to respond within two business days to the Commission assumes availability of personnel that may well not exist for a competitive company. Longer intervals are permitted by other state commissions and would relieve some of the burdens on providers. For example, Arizona, Minnesota and Montana require responses within five working days, and Colorado allows ten working days after receipt of the complaint to respond. The requirement to respond to requests for additional information within three business days is also burdensome as much of the requested information is not available to the provider within that time frame.

AT&T and MCIW appreciate the opportunity to comment on these issues and look forward to participating further in these proceedings.

Respectfully submitted on February 4, 2000.

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