

June 15, 2000

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 – Technical Rules

Dear Ms. Washburn:

These comments are submitted by the Washington Independent Telephone Association (WITA). These comments address issues that were raised at the workshops held to discuss the “technical rules” portion of the rulemaking to review Chapter 480-120 WAC. These comments will address each of the rules contained in the technical portion of the chapter in order.

WAC 480-120-046. WITA suggests that subsection (2) of this rule be re-written to read as follows:

Types of Service. Local exchange companies and those companies designated as eligible telecommunications carriers must offer, at a minimum, flat-rate service. They may offer service alternatives, such as measured service. As used in this rule, flat-rate service means service which allows the customer an unlimited number of minutes for one set price.

This modification will clearly delineate the obligations of a company designated as an ETC to offer flat-rate service and define what is meant by flat-rate service. The Commission has authority to set this standard for all ETCs, including wireless companies. See, Texas Office of Public Utility Council v. FCC, 183 F. 2d 393 (Fifth Circuit, 1999).

2. WAC 480-120-051. WITA is concerned that a firm application of the standards contained in subsection (5) is unreasonable. Subsection (5) should be modified to require that the standards be met only where facilities are available and where weather conditions permit. In some parts of the state, construction during winter months is a nearly impossible task.

WAC 480-120-076. WITA agrees that this regulation should be repealed.

WAC 480-120-091. WITA agrees that this rule should be repealed.

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WAC 480-120-096. WITA agrees that this rule should be repealed.

WAC 480-120-126. This rule is simply no more than a statement of common sense. It should be repealed as unnecessary.

WAC 480-120-131. This is an area that is regulated by the Department of Labor and Industries. WITA's member companies submit reports of any accidents to L&I and, L&I is the enforcement agency for such issues. This rule is duplicative and should be repealed.

WAC 480-120-151-153. These rules should be consistent with the federal rules on CPNI.

WAC 480-120-340. No comments at this time.

WAC 480-120-350. This rule should be re-written. As proposed, subsection (2) would require the local exchange company to create a record of a reverse search. Most LECs are not able to do this. The database administrator must be the one who makes this record. The same is true for subsection (6). A LEC will not know in many cases that there has been a reverse search and therefore cannot possibly meet the obligation placed upon it by the proposed language.

WAC 480-120-500. WITA is very concerned that the Commission is moving away from design standards to performance standards in the quality of service rules. See, in particular WAC 480-120-515. As performance standards, the Commission will make the companies guarantors of service. This will increase the cost of providing service. By moving away from design standards to performance standards, the Commission is creating a new basis for customers to bring lawsuits for damages. A company facing action for damages, even where unwarranted, will face increasing costs for litigation which is borne by all customers. The Commission should not be in the business of creating new rights of action and should retain the existing quality of service standards as design standards.

WAC 480-120-505. No comment at this time.

WAC 480-120-510. WITA's member companies cannot, as a general rule, meet the standards set forth in subsection (2). First, for small companies, the business office and the repair office are often the same. If there is an outage, the office will be flooded with calls which are not capable of being answered within the time constraints set forth in the rule. A measurement predicated on answering calls is a measurement of customer service. It is not a measurement of quality of service from the network. This rule tries to replace the marketplace. Companies should compete on quality of service. If customers sit on hold too long, they will seek another provider. This portion of the rule is unnecessary.

WAC 480-120-515. This is a key section where changing from design standards to performance

standards will create liability for the companies and increase their costs of operation. This section received extensive discussion at the last workshop. In reviewing the notes from that meeting, it is apparent that Commission Staff will make several clarifying changes to the language in this section to be sure that such things as requiring remote switches to provide intercept service are not retained in the language. WITA will not list each of those changes, but notes that its member companies appreciate Staff's making those changes. However, WITA does note that one of the more important changes to be made is that the standards will apply only to the network of the provider itself, and the provider will not be responsible for network performance of interconnecting companies.

If these standards become performance standards rather than design standards, the net effect will be an increase in cost to the companies. The companies will be required to design to an even higher standard in order to meet the standards set out in the rule. It is not prudent design practice to design to meet the minimum performance that a company is required to provide. This will add increased expense to the network construction standards and will delay getting facilities to customers. Further, the existing standards have been used for network design for years. It is fundamentally unfair to adopt higher standards to apply to the existing network. At a minimum, these rules must be defined to apply only to new construction.

There are actually places within the existing standards that companies can not currently meet. One example is subsection (3)(a)(iv). That standard says that the circuit noise on customer loops measured at the customer network interface must be equal to or less than 20.0 dBmC. Current manufacturing standards for DLCs place that noise limit at 23.0 dBmC. Thus, the manufacturers have developed a standard for today's market that is below the existing rule. Please remember that the use of DLCs is, in part, to make advanced services more readily available to outlying customers.

During the workshop, Commission Staff indicated that one of the motivations for making the standards performance standards was because of internet issues. This raises a very serious policy issue. Internet service is a data service. The current network is designed to be a voice network. By changing the standards from a design standard to a performance standard, the Commission is asking companies to deliver something they cannot meet. Further, it may not be really addressing the problem. ISPs can create blocking conditions by simply failing to order a sufficient number of trunks. Further, ISPs can create blocking conditions by changing their location. The network may be built and reinforced to provide service to a current ISP location. Three months from now that ISP may move to a larger location as its business grows and the problem is created in a new point in the network.

The proposed rule does provide some relief for extraordinary circumstances such as force majeure. Staff provided a definition of a force majeure which is somewhat unusual. WITA believes a more standard definition of that term is appropriate. A proposed definition of that term is attached.

Staff also proposed deleting holidays as an extraordinary circumstance. This means that the existing network, which is designed, not to be sure that 99% of the calls go through on Mother's Day or Christmas, but under more standard operating conditions, would now have to be reinforced to meet a new requirement that including holiday traffic in the calculation would force on the network.

WAC 480-120-520. WITA believes that the definition of a major outage contained in the current language in subsection (1) should be retained. This provides what the industry understands and believes constitutes a major outage.

WAC 480-120-525. WITA urges Staff to modify 2(e). In small offices, a very few trouble reports will place the company in violation of the rule.

WITA's member companies cannot meet the standard contained in subsection (3). That is an unrealistic standard. A realistic standard would be a minimum of 80% of call attempts.

WITA supports the changes to (2)(f), (h) and (i) described in the meeting notes.

WAC 480-120-530. No comments at this time.

WAC 480-120-535. The proposed changed to require companies exempt from reporting to file reports "when deemed necessary by the Commission" is in violation of the statutory provisions on reporting by these companies. See RCW 80.04.530. The Commission may not by rule establish a reporting requirement of "when deemed necessary by the Commission."

WAC 480-120-X05. WITA suggests that subsection (2) be removed. As stated, this language could be considered to be a limitation on what the company may recover from a customer or an individual who damages its facilities. State statute allows broader recovery than is contained in the rule.

WAC 480-120-X05.5. No comments at this time.

21. WAC 480-120-X06. This rule should be dealt with in another rulemaking which focuses particularly on obligation to serve issues.

22. WAC 480-120-X08. WITA believes this rule goes beyond the Commission's authority. Further, service quality guarantee programs should be a matter for each company to determine. These proposals are based on an experience the Commission had with US WEST. If there are service quality issues with a specific company, the Commission has remedies to apply to that company. This is an attempt to fix individual company problems by imposing an industry wide solution. It is inappropriate to apply this set of requirements to all companies. If it is a good idea, the market will respond.

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WAC 480-120-X16. WITA agrees with the proposed changes as set forth in the minutes of the meeting.

WAC 480-120-X17. WITA agrees with the comments in the minutes.

Thank you for the opportunity to comment.

Sincerely,

TERRY VANN

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