

September 15, 2000

Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250

Re: In the Matter of Rulemaking Concerning Collocation -
Docket No. UT-990582 – Comments of the Washington
Independent Telephone Association Rural Coalition

Dear Ms. Washburn:

Pursuant to the Commission's Opportunity to Submit Written Comments on Proposed Rules, the Washington Independent Telephone Association Rural Coalition (Rural Coalition)¹ files these Comments. Pursuant to the Commission's request, enclosed are ten copies of the comments. A copy will be submitted by e-mail as well.

In the CR 101 process, the Washington Independent Telephone Association (WITA) filed comments that the Commission should be clear that the proposed collocation rules do not apply to companies that have a rural exemption under the Telecommunications Act of 1996.² The Rural Coalition appreciates that the Commission has taken those prior comments into consideration and has defined the term "ILEC" for purposes of WAC 480-120-560 to mean "an incumbent local exchange

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¹ The WITA Rural Coalition consists of the following WITA members: Asotin Telephone Company, CenturyTel of Washington, Inc., CenturyTel of Cowiche, Inc., CenturyTel of InterIsland, Inc., Ellensburg Telephone Company, Hat Island Telephone Company, Hood Canal Communications, Inland Telephone Company, Kalama Telephone Company, Lewis River Telephone Company, McDaniel Telephone Company, Mashell Telecom, Inc., Pend Oreille Telephone Company, Pioneer Telephone Company, Tenino Telephone Company, The Toledo Telephone Co., Inc., Western Wahkiakum County Telephone Company, Whidbey Telephone Company and YCOM Networks, Inc.

² 47 USC 251(f)(1).

carrier that is required to provide collocation." As the Rural Coalition reads this definition, WAC 480-120-560 would only apply to its members at such time as the exemption they enjoy from the duties imposed under 47 USC 252 (c) is lifted as the exemption applies to collocation.

However, the Rural Coalition does have further concerns with the language of the proposed rule. These are concerns that are premised upon the assumption that at some time in the future a request will be made to lift one or more of the members of the Rural Coalition's statutory exemption from providing collocation. After an appropriate hearing, and based upon appropriate facts, it may well be that the Commission may issue an order requiring a member of the Rural Coalition to provide collocation.

It is sometimes easy to assume that the rules that the Commission adopts related to competitive matters will only affect Verizon and Qwest. However, as we move into the future that will not be the case. The Commission should take care that the rules that it puts in place do not include unwarranted burdens on smaller incumbent carriers that may make provision of collocation in those circumstances overly costly and burdensome.

On that basis, WITA's Rural Coalition offers the following comments:

WAC 480-120-560(2).

The Commission's substantive portion of the collocation rule begins with the requirement that the ILEC must respond to the CLEC order for collocation within 14 calendar days of receipt of an order for collocation. The ILEC is required to notify the CLEC whether sufficient space exists to accommodate the CLEC's collocation requirements. This is the wrong starting point for the substantive rules. The starting point should be with a delineation of what the order from the CLEC must contain.

The Commission should require that the CLEC state with specificity the space required, the type of equipment to be collocated, the type of collocation desired (including a listing in order of preference for other types of collocation) and other matters that would make it possible

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for a ILEC to respond to a CLEC's request. This is a reasonable requirement to include in

a rule. Otherwise, a CLEC could file a general statement of a desire to collocate and the ILEC would be left to wonder how to respond.

WAC 480-120-560(3)(a).

This rule requires that the ILEC provide a written quote detailing the non-recurring and recurring charge applicable to provisioning the ordered collocation within twenty-five calendar days of receipt of the order. For a rural company receiving its first collocation request that may well be impossible. Most rural ILECs do not have the experience with what "collocation" means or the alternative types of collocation. The concepts of what constitutes collocation and the types of collocation that must be made available are evolving and becoming more exotic.

It is more likely that the CLEC has far more experience than the rural ILEC in dealing with these issues and it more probable that the CLEC has far greater financial resources than the rural ILEC involved in the request. Therefore, the Rural Coalition suggests that a sentence be added at the end of draft WAC 480-120-560(3)(a) to read as follows:

The twenty-five calendar day requirement of this subsection shall be extended to forty-five calendar days for the first three collocation requests received by an ILEC for which the rural exemption under 47 USC 251(f)(1) from the requirement to provide collocation has been lifted.

WAC 480-120-560(3)(b).

The same issues discussed above apply to the requirement contained in this section to provide the ordered collocation space within forty-five calendar days after the CLEC's acceptance of the written quote or payment of one-half of the non-recurring charges. The Rural Coalition suggest that the following language be added at the end of this subsection to read as follows:

The forty-five calendar day requirement of this subsection shall be extended to ninety calendar days for the first three collocation requests received by an ILEC for which the rural

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exemption under 47 USC 251(f)(1) from the requirement to provide collocation has been lifted.

There is also an ambiguity in this subsection. The first sentence of the subsection refers to the CLEC's acceptance upon "payment of one-half of the non-recurring charges

specified in the quote ...". The second sentence of the subsection refers to the CLEC's "payment of any quoted charges" The difference in language raises an ambiguity. May a CLEC pay only a smaller portion (i.e. less than one-half) of the quoted non-recurring charges and still impose an obligation upon the CLEC to move forward? Rural Coalition suggests that this sentence be rewritten to remove that ambiguity as follows:

The CLEC's acceptance of the quote or payment of one-half of the non-recurring charges specified in the quote does not preclude the CLEC from later disputing the accuracy or reasonableness of those charges.

There is a further issue with this subsection. For small, rural companies, the payment of only one-half of the non-recurring charges by the CLEC will still place the small company at considerable risk. For example, if a small company is asked to undertake a collocation which will require it to incur \$30,000 in construction costs, a deposit of only \$15,000 is made by the CLEC under the proposed rule. If the CLEC later changes its mind and walks away, there is no requirement for the CLEC to pay the remainder of the cost incurred by the small company. It should be made absolutely clear that a CLEC has the obligation to pay for the total non-recurring charges either (1) as quoted (and undisputed) or (2) after resolution of any dispute as to the appropriate amount of the non-recurring charges. A sentence should be added to subsection (b) that states as follows:

The CLEC's acceptance of the quote or payment of one-half of the quoted charges then obligates the CLEC to pay the full amount of the non-recurring charges as quoted, if undisputed, or the full amount of the charges as determined by dispute resolution process, if the level of non-recurring charges is disputed.

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WAC 480-120-560(3)(c).

This subsection would require completion of the collocation space within ninety calendar days after acceptance or payment of one-half of the non-recurring charges. For small ILECs, this may be an impossible deadline to meet. Where extraordinary circumstances require the need to reclaim space or rearrange equipment or facilities, a small ILEC may not have the personnel to respond within ninety days. For example, if rearrangement of space requires dealing with the small company's switching facilities, then the switching vendor's personnel will have to be contacted and provision made for them to work on the equipment. Small ILECs do not normally have that level of expertise already on staff. Nor do small ILECs

maintain great reserves of fiber optic cable. As the Commission may be aware, today there is a long backload for the availability of fiber optic cable. In many cases, it is as long as sixty months. A small ILEC without much bargaining power in the marketplace for fiber optic cable is usually at the end of that waiting list.

The Rural Coalition suggests that small ILECs be given one hundred-eighty calendar days to perform under an extraordinary circumstances. Language could be added at the end of this subsection which reads as follows:

The ninety calendar day requirement of this subsection shall be extended to one hundred-eighty calendar days for the first three collocation requests received by an ILEC for which the rural exemption under 47 USC 251(f)(1) from the requirement to provide collocation has been lifted.

WAC 480-120-560(3)(d).

The issue will probably be litigated by other parties in other venues. However, Rural Coalition is concerned about the constitutionality of the Commission forcing it to allow a third party access to its property to construct the third party's facilities as a matter of governmental requirement or fiat.

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WAC 480-120-560(3)(e).

The Rural Coalition is not sure what is meant by the last sentence of this subsection. Presumably the concepts of self-provisioning and the charges that may be assessed in that instance will be worked out in the Commission's Generic Pricing Docket UT-003013.³ Using the standard dictionary definition for provisioning, there is at least an ambiguity that the ILEC could not charge rent for the space used for the facilities if the CLEC self-provisions an element.

WAC 480-120-560(3)(f).

³ While WITA remains a party to that docket, the number and variety of Commission dockets has outstripped WITA's resources. WITA is no longer able to participate in that docket as an active party.

The last sentence of this subsection requires that the ILEC must provision the point of interface (POI) and other circuits concurrent with the delivery of the collocation space and related facilities. This again may place a small ILEC in an impossible situation. There are many types of POIs that are allowed in a competitive environment. If, for example, a meet-point is the POI, then the small ILEC may be required to construct fiber optic facilities to that meet-point. The small ILEC may not have the fiber optic cable available to it. It would almost certainly not have spare equipment lying around which would be needed to light the facility.⁴ The ordering times for such facilities may well mean that it will take much longer for a small ILEC to provision the facilities than the timelines contemplated by this rule.

WAC 480-120-560-(3)(h).

There is no mention in this subsection as to what provisions for security may be installed and how those costs are recovered. The Rural Coalition presumes that this issue will be covered by the Commission's Generic Pricing docket.

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WAC 480-120-560(4)(b).

This subsection may be inconsistent with the proposed WAC 480-120-560(2). The earlier proposed rule requires the ILEC to provide a response to an order for collocation within fourteen calendar days. As written, WAC 480-120-560(4)(b) requires that where a denial occurs, the ILEC must permit the CLEC to tour the ILEC premises within fourteen calendar days of the CLEC's request. Is this reference to "request" a reference to the request for collocation? Presumably, the rule means that touring the facility will occur within fourteen calendar days following a CLEC's request made after receipt of the notice of denial. To clarify this potential ambiguity, the Rural Coalition suggests this subsection be rewritten as follows:

The ILEC must permit the CLEC to tour the ILEC premises within fourteen calendar days of receipt of the CLEC's request to tour the ILEC's premises made following the CLEC's receipt of notification that there is insufficient space to accommodate the CLEC's order for collocation.

⁴ Members of the Rural Coalition are experiencing long delays from manufacturers and suppliers of electronics who fail to meet the original, generous delivery dates.

WAC 480-120-560(4)(c).

At this point the Rural Coalition will not comment on the Commission's allocation of burden of proof. However, the Rural Coalition does believe it inappropriate for the Commission to assert that the ILEC has the burden of preparing a petition to the Commission if the CLEC denies the request. The burden of moving forward can not be placed on the ILEC. If the CLEC desires to pursue the matter, then it should file the petition with the Commission.

The Rural Coalition also notes that its members may not be able to respond with the types of information required under this subsection. For example, it may not have color-coded floor plans that provide spatial dimensions to calculate square-footage of each area and locate inactive and under-utilized equipment. It may not be able to prepare within twenty-five days a written inventory of active, inactive and under-utilized equipment.

In addition there are some items within the proposed rule that are ambiguous. What is a "description of conversion of administrative,

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maintenance, equipment and storage space plans and time frames for completion"? Is this meant to be a description of "plans for conversion", if any?

WAC 480-120-560(4)(f).

The Rural Coalition notes that the last sentence of this proposed subsection raises an ambiguity. That sentence states that "The ILEC must provision collocation to these CLECs on a first-come, first-served basis according to the dates on which each ordered collocation or submitted a letter of intent to collate in that central office." This is the first time that the concept of a letter of intent is introduced into the proposed rule. All other obligations are driven off of the placement of an order for collocation. Under this proposed rule, a CLEC that simply sends out a letter of general intent would have priority over a CLEC that the next day files an actual order for collocation specifying the types and requirements for its collocation. The Rural Coalition suggests that the language related to the letter of intent be deleted.

Comment on Numbering Sequence.

The Rural Coalition notes that the proposal is to adopt this rule as WAC 480-120-560. As originally written, the 500 section of the Commission's rules related to quality of service standards as it applies to the delivery of service to retail customers. The Rural Coalition suggests that the Commission

organize its rules into sections by subject matter to help parties understand the application of various rules.

In Docket UT-990146, the Commission is considering a re-write of Chapter 480-120 WAC. The overall organizational structure can be addressed in that rulemaking. However, for rules that relate to competitive issues, such as collocation, the Rural Coalition suggests that the Commission start a new section, perhaps using the 600 section for this purpose.

SBEIS.

The notice for submitting comments on the Small Business Economic Impact Statement (SBEIS) was received by the members of

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WITA's Rural Coalition on or about September 5, 2000. The notice concerning the SBEIS asked for a response by September 20, 2000. The members of the Rural Coalition do not have the resources that would allow them to respond to the Commission on the costs associated with complying with the proposed rule in such short period of time. Because of the short notice, most members of the rural coalition will not be able to provide information to the Commission on this issue.

Force Majeure.

The members of the Rural Coalition are very concerned that when this rule applies to them, the timelines that are set in the rule are impossibly short. Most Rural Coalition members do not have the expertise or personnel available to them to meet the timelines. The comments above suggest modest extensions of the timelines in some instances. Because of the realities of the marketplace, a sixty month waiting list for fiber optic cable and manufacturers of electronics failing to meet delivery dates, more than modest extension of timelines is needed. The Rural Coalition suggests that the Commission add to this proposed rule a Force Majeure section which recognizes that there will be instances when an ILEC is unable to meet a CLEC's request due to circumstances beyond the ILEC's control. That language could be added as subsection (5) and could read as follows:

(5) Force Majeure. An ILEC shall not be in violation of this rule if its failure to meet a timeline set forth in this rule arises from any cause reasonably beyond the control of the ILEC. A Force Majeure may include, but is not limited to, acts of nature, acts of civil or military authority, government regulations, embargoes, fires, work stoppages, equipment failure, unusually severe weather conditions, inability to secure products or services from other

persons or transportation facilities, acts or omissions of transportation carriers, or acts of third parties.

This language will reflect the realities faced by carriers in the marketplace.

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Conclusion.

The Rural Coalition appreciates the opportunity to submit Comments in this docket.

Sincerely,

TERRY VANN

TV/nr

Enclosures

Cc: WITA Board of Trustees
Commissioner Marilyn Showalter
Commissioner Richard Hemstad
Commissioner William Gillis