

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of)	
)	DOCKET NO. UT-990146
)	
Repealing WAC 480-120-057 and Adopting WAC 480-120-125)	GENERAL ORDER NO. R-503
)	
Relating to Telephone Companies.)	ORDER REPEALING AND ADOPTING RULES PERMANENTLY
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission takes this action under Notice WSR #02-12-055, filed
with the Code Reviser on May 30, 2002. The Commission brings this proceeding
pursuant to RCW 80.01.040 and RCW 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open
Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act
(chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), the State
Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory
Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date that this
Order is entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW
34.05.325 requires that the Commission prepare and provide to commenters a concise
explanatory statement about an adopted rule. The statement must include the
identification of the reasons for adopting the rule, a summary of the comments
received regarding the proposed rule, and responses reflecting the Commission's
consideration of the comments.

5 The Commission has included a discussion of these matters in this rule adoption
order. In this docket, to avoid unnecessary duplication, the Commission designates
the discussion in this order as its concise explanatory statement, supplemented where
not inconsistent by the staff memoranda presented at the open meetings where the
Commission considered whether to begin a rulemaking and whether to propose
adoption of specific language. Together, the documents provide a complete but
concise explanation of the agency actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This Order repeals the following section of the Washington Administrative Code:

 WAC 480-120-057 Deposit or security--Interexchange telecommunications companies.

7 This Order adopts the following section of the Washington Administrative Code:

 WAC 480-120-125 Deposit or security--Telecommunications companies.

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on April 15, 1999, at WSR #99-09-027.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL**

STATEMENT: The statement advised interested persons that the Commission was considering entering a rulemaking to review rules relating to regulated telephone companies for content and readability pursuant to Executive Order 97-02, with attention to the rules' need, effectiveness and efficiency; clarity, intent, and statutory authority, coordination, cost, and fairness. The statement also advised that the review would include consideration of whether substantive changes or additional rules are required for telecommunications regulation generally, and in concert with the Federal Telecommunications Act of 1996 and potential actions by the Washington Legislature during its 1999 session. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered telecommunications companies and the Commission's list of telecommunications attorneys. The Commission posted the relevant rulemaking information on its internet web site at www.wutc.wa.gov.

10 **MEETINGS OR WORKSHOPS; ORAL COMMENTS:** The Commission held rulemaking workshops on May 8, 2001, April 16, 2001, June 5, 6, and 7, 2001, September 19, 2001, October 18 and 19, 2001, and November 20, 2001. Representatives of a diverse group of telecommunications companies, organizations representing consumers, and Public Counsel, attended these workshops.

11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on May 30, 2002, at WSR #02-12-055 in which it proposed to repeal, adopt, and amend a number of sections. The Commission scheduled this matter for oral comment and adoption under Notice WSR #02-12-055 at 9:30 a.m., Friday, July 26, 2002, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

12 **NATURE OF THE PROPOSED ACTION:** In this Order the Commission acts to repeal and to adopt only the portions of the proposal relating to deposit and security requirements pertinent to services provided by one telecommunications company to other telecommunications companies. The Commission will address other aspects of the proposal in WSR #02-12-055 in a later order.

13 **ORAL AND WRITTEN COMMENTS:** The current rule is three pages, and sets numerous prescriptive standards and proposed steps that a telecommunications company must follow in situations where the rule determines that a deposit is required. The new rule would replace those prescriptive and burdensome requirements with a one-sentence rule that allows, but does not require a telecommunications companies to collect a deposit. If a company should choose to require deposits, the terms under which it would do so would need to be spelled out in its tariff or price list. The Commission received written comments on the proposed rule from the Washington Independent Telephone Association (WITA) on July 12, 2002. WITA also made oral comments opposing adoption of the proposed rule.

14 WITA recommends that the Commission retain a rule that spells out specific standards for determining when a deposit is required, and provided the text of an alternative rule for the Commission's consideration. WITA's suggested rule uses a company's debt rating as a proxy for its credit worthiness. It prescribes how soon a deposit must be paid after it is requested. It states what types of deposits would be acceptable, and lets the company requesting the deposit determine if any form of deposit not listed in the rule is acceptable. It contains a presumption of receipt of a mailed request for deposit. It provides the circumstances under which a deposit may be applied to a delinquent account. Finally, it provides for additional deposits if the level of service is increased.

15 WorldCom, Inc. (WorldCom) stated at the rules hearing that it opposed both the existing rule and the proposed rule. WorldCom contends that deposit requirements will limit the number of companies that can afford to offer service.

16 AT&T Communications of the Pacific Northwest, Inc. (AT&T) stated at the rules hearing that it opposed WITA's suggested rule.

17 WITA also took issue with the characterization in the small business economic impact statement (SBEIS) of proposed WAC 480-120-125 as being not substantively different from the existing rule, WAC 480-120-057.¹

¹ The Commission's SBEIS questionnaire on this rule was sent to every company affected by the proposed change. No company responded to the portion of the SBEIS that asked for information about any increased costs that might be caused by this rule. The new rule would eliminate both the requirement that companies collect deposits from other companies and the

- 18 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on July 26, 2002, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad and Commissioner Patrick J. Oshie.
- 19 The Commission heard oral comments from Mr. Richard Finnigan, representing WITA; Ms. Michel Singer-Nelson, representing WorldCom; and Ms. Cathy Brightwell, representing AT&T. The comments are summarized in paragraphs 14 through 17, above.
- 20 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** The Commission rejects the suggestions of WITA, WorldCom, and AT&T described above in paragraphs 14 through 17.
- 21 WITA suggests alternative language that would specify the details of intercompany deposits and standards for their application. We reject it because it is too prescriptive. A prescriptive rule has the merit of spelling out how certain facts must be applied in making a decision, but this certainty comes at the cost of a loss of flexibility, and of the ability of companies to make their own business decisions.
- 22 The proposed rule allows for more flexibility on the part of local exchange companies. It allows, rather than requires, companies to review the credit standing of other telecommunications companies. A company's management will not be required to collect deposits, if the company's management believes that this effort is unnecessary. The proposed rule lets companies behave much like businesses operating in unregulated industries; some companies will not pursue deposits and others can pursue reasonable deposits, depending on their view of what is reasonable action under the circumstances to protect both them and their customers. Companies that choose to require deposits will need to replace the prescriptive rule with their own deposit standards, as spelled out in their tariffs or price lists, thus providing authority to charge the deposits and notice to customers of their deposit policies.
- 23 The Commission notes that telecommunications companies must propose tariffs to adopt deposit requirements as allowed by the rule, and that the Commission may deny

detailed provisions governing the circumstances, manner, and amount of those deposits. While the rule is changed, the characterization in the SBEIS with respect to proposed WAC 480-120-125 is made in the context of the Regulatory Fairness Act. The SBEIS describes the change as "no substantive change" indicating that the rule does not make a change that would impose more than minor costs on businesses in an industry.

a tariff that is unreasonable with respect to the amount of the deposit and any other aspect of the tariff (e.g., the form of deposit).

24 At the same time, the proposed rule serves an important regulatory purpose because it puts every company on notice that it may request reasonable deposits and that reasonable deposits may be requested of it. It also puts every company on notice that the Commission may accept tariffs that contain reasonable deposit requirements.

25 WorldCom opposes having any rule on company-to-company deposits because it believes that deposit requirements will limit the number of companies that can afford to offer service. That may be so, but even if it is so, that approach would leave providers with no way to protect themselves in circumstances in which any prudent business would seek a deposit or other assurance of payment. We understand AT&T's position to be the same as that of WorldCom.

26 The Commission does not agree with WorldCom and AT&T. The Commission believes that it should allow companies the ability to require a deposit. This is a good policy because it provides protection to companies that are required by law to sell services to other telecommunications companies (e.g., local exchange providers must permit equal access to long distance carriers.) The Commission has determined that the better choice is to adopt a rule that is as flexible as possible so that companies have recourse, if necessary, to deposits to protect against credit risks.

27 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission repeals WAC 480-120-057 and adopts WAC 480-120-125 as included in the CR-102 at WSR #02-12-055 to the extent specified herein, with the changes described below.

28 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal with the following changes from the text noticed at WSR #02-12-055. The caption is changed to describe more accurately the effect of the rule. The language of the rule text remains unchanged from the proposal in WSR #02-12-055.

29 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-120-057 should be repealed, effective on the thirty-first day after filing with the Code Reviser pursuant to RCW 34.05.380 (2).

30 The Commission also determines that WAC 480-120-125 should be adopted to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380 (2) on the thirty-first day after filing with the Code Reviser.

ORDER

31 THE COMMISSION ORDERS:

32 WAC 480-120-057 is repealed, effective on the thirty-first day after filing with the
Code Reviser pursuant to RCW 34.05.380(2).

33 WAC 480-120-125 is adopted to read as set forth in Appendix A, as a rule of the
Washington Utilities and Transportation Commission, to take effect pursuant to RCW
34.05.380(2) on the thirty-first day after filing with the Code Reviser.

34 This Order and the rule set out below, after being recorded in the register of the
Washington Utilities and Transportation Commission, shall be forwarded to the Code
Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this ____ day of October, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.