November 12, 1999

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Carole Washburn, Secretary
Washington Utilities and
Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Re: Rulemaking on Consumer Changes in Local Exchange and Intrastate Toll Service Providers, Docket No. UT-980675

Dear Ms. Washburn:

Pursuant to the Commission's Notice of Opportunity to Submit Written Comments on Proposed Rules in the above-referenced docket, NEXTLINK Washington, Inc., and Advanced TelCom Group, Inc. ("ATG"), provide the following comments.

NEXTLINK and ATG share the Commission's concerns that consumers be protected from "slamming," *i.e.*, changes of their chosen telecommunications service provider(s) without their authorization. Adoption of a rule consistent with the FCC's requirements for interexchange carriers ("IXCs") is an appropriate means to address those concerns. Extending those restrictions to local service providers, however, imposes needless obstacles to the development of effective local exchange competition to the detriment, rather than the benefit, of Washington consumers. The Commission, therefore, should modify the proposed revisions to WAC 480-120-139 in at least two respects.

First, facilities-based local exchange providers should not be required to verify customer orders for local service. Competing local exchange carriers ("CLECs") must invest substantial

sums to serve each customer, either by constructing their own facilities to the customer premises or obtaining an unbundled loop from the incumbent local exchange carrier ("ILEC"). A CLEC will not make that investment without a reasonable assurance that the customer wants service from the CLEC. In contrast to IXCs that may incur little or no costs to switch customers to and from their service, therefore, the economics of the business discipline facilities-based CLECs. Additional Commission regulation simply burdens customer choice and discourages facilities-based providers from serving customers other than large businesses and other customers likely to generate revenues sufficient to justify the administrative expense and inconvenience of obtaining individualized contracts or letters of agency.

The rule language implicitly recognizes the distinction between facilities-based LECs and other carriers by restricting application to "change orders." The plain meaning of "change order" is an order that requires the currently serving company to take all the actions necessary to change the customer to a different provider, *e.g.*, reprogramming the switch to designate a different IXC or changing the billing for resold local exchange service. ILECs, however, are likely to interpret "change order" much more expansively to apply to any order involved in transferring a customer from one LEC to another. The Commission, therefore, should add the following sentence to subsection (1) of the rule:

> For purposes of this section, a change order refers to an order for a change in service provider that is accomplished solely by the local exchange company currently serving the customer, such as an order to change the customer's primary interLATA or intraLATA toll carrier. A change order for local exchange service would include an order to change service from the existing facilities-based provider to a reseller of that provider's services or to change from one reseller of the facilities-based provider's service to another reseller of that service. A change order for local exchange service, however, does not include orders related to changes between facilities-based service providers, for example, an order for coordinated cut-over of the customer's service from the existing local exchange provider to a carrier providing that service, in whole or in part, using its own facilities.

The other modification required is to the proposed additional subsection governing preferred carrier freezes. Preferred carrier freezes present significant potential for anticompetitive abuse. ILECs have every incentive to retain their existing monopoly customer

base by making the exercise of consumer choice as difficult and possible, and the proposed subsection (5) provides additional opportunities for them to do so. Although the Commission has attempted to put some checks on potential abuse through the confirmation requirement in subsection (5)(c), subsection (5) generally is problematic, particularly subsections (5)(a) and (b). The Commission should know, based on its experience with implementing equal access, that ILECs do not share the Commission's and other parties' interpretation of "clear and neutral language" with respect to informing customers of their competitive options. The Commission, moreover, should not be anxious to take on the role of monitor and censor of the content of Commission-mandated customer notices.

The requirement that all LECs provide *initial and annual* notices to customers of the availability of a preferred carrier freeze only multiplies the ILECs' opportunities for misleading customers. Such a requirement also imposes a substantial additional regulatory burden on CLECs, ensures that the Commission will constantly be required to review and revise notice language, and would likely confuse, more than inform, consumers. The Commission, therefore, should not adopt the proposed subsection (5). At a minimum, the Commission should not adopt subsections (5)(a) and (b).

If the Commission adopts subsection (5), in whole or in part, the Commission should also clarify that a preferred carrier freeze does not apply to a customer decision to obtain local exchange service from an alternate provider. The term "*preferred* carrier" connotes some control by the LEC over the customer's selection of a default carrier to provide services other than basic local exchange service, *i.e.*, toll services that a customer could obtain from other carriers on a dial-around basis. A LEC, however, is not a default carrier but the *only* carrier that can provide local exchange service to that customer (at least on a per-line basis). A different LEC thus is an *alternate* carrier, not a *preferred* carrier. By extending preferred carrier freeze to LECs, the Commission would authorize LECs -- particularly ILECs -- to determine whether their existing customers have sufficiently consented to switch to a competitor. Such authority would be blatantly anticompetitive. The Commission, therefore, should delete "local exchange" from the parenthetical in the fourth sentence of subsection (5) and add the following sentence after the first sentence: "A preferred carrier does not include a local exchange carrier."

NEXTLINK and ATG appreciate the opportunity to provide comments to the Commission on these issues. Please contact me if you have any questions about these comments.

Sincerely yours,

DAVIS WRIGHT TREMAINE LLP

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cc: Kaylene Anderson
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