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October 21, 2003

**VIA E-MAIL, FACSIMILE & FIRST CLASS MAIL**

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

**RE: Comcast Petition for Interpretive and Policy Statement or Declaratory Ruling  
WUTC Docket UT-031626; and  
Comcast Application for Mitigation of Penalties or for Stay  
WUTC Docket UT-031459**

Dear Ms. Washburn:

Public Counsel submits these comments in response to two petitions filed recently by Comcast Phone of Washington, LLC (“Comcast” or “Company”) regarding the company’s obligation to submit service quality reports to the Commission. Public Counsel respectfully requests that the Commission deny Comcast’s petition filed October 2, 2003 for an interpretive statement or declaratory ruling that CLECs shall be exempted from the service quality reporting requirements established in WAC 480-120-439, and order Comcast to comply with WAC 480-120-439 as adopted by the Commission in Docket UT-990146.<sup>1</sup> (Comcast’s October 2, 2003 petition in UT-031626 is hereafter referred to as “Comcast Petition”). For the reasons set forth below, we also recommend that the Commission deny Comcast’s petition for mitigation of penalties, as requested in their September 30, 2003 filing in docket UT-031459.

**Commission Rules Require CLECs to Meet Service Quality Performance Standards**

The Commission’s rules require CLECs to meet certain service quality performance standards. In some instances, more stringent standards are placed on ILECs while more relaxed

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<sup>1</sup> In the Matter of Amending, Adopting and Repealing Chapter 480-120 WAC Relating to Telephone Companies, Docket UT-990146, General Order No. R-507, Order Amending, Adopting and Repealing Rules Permanently, filed with the Code Reviser’s Office December 12, 2002. (Hereafter “Commission Adoption Order”).

standards are placed on CLECs, recognizing that non-facilities-based CLECs are largely dependent upon the incumbent carrier for certain service quality performance issues such as completing an order for basic service within five days. For example, with respect to performance standards for the installation and activation of access lines, WAC 480-120-105, CLECs are exempt from the monthly and quarterly performance standards, but CLECs are required to complete one hundred percent (100%) of orders for access lines within 180 days, as set forth in subsection (1)(c) of that rule.<sup>2</sup> In comparison, ILECs are required to comply with all three performance standards established in the rule. Other service quality performance standards, such as repair of out of service conditions (WAC 480-120-440) and standards for the business office and repair answering systems (WAC 480-120-133) apply to all local exchange companies, both ILECs and CLECs.

### **Commission Rules Require Larger CLECs to File Service Quality Reports**

Commission rules clearly require larger CLECs – those with more than two percent of the state’s access lines – to file service quality reports with the Commission. WAC 480-120-439 requires Class A companies to file monthly service quality reports with the Commission. WAC 480-120-021 defines “Class A” companies as those local exchange companies with more than two percent of the state’s access lines. This definition, as well as the service quality reporting rule, apply to the larger local exchange companies—both incumbent and competitive LECs. This is entirely appropriate and consistent with the public interest because as described above, several service quality performance standards established in the Commission’s rules apply to CLECs. Since CLECs must meet these service quality performance standards, it does not appear to Public Counsel to represent an undue burden to require CLECs to report their performance to the Commission. Such reports will allow the Commission to determine whether the larger local exchange companies—both ILECs and CLECs—are meeting the Commission’s performance standards.

### **Comcast’s Assertion that the Rulemaking did not Contemplate Applying the Service Quality Reporting Rule to CLECs is Incorrect**

Comcast asserts in their petition that “nothing in the rulemaking put CLECs on notice that the Commission intended CLECs to be subject to service quality reporting rules.” Petition at p. 5. This claim is incorrect. In its January 23, 2001 Notice in the telecommunications rulemaking docket UT-990146, the Commission released a draft set of rules and a draft set of definitions, and requested written comments by February 14, 2001. The Commission’s draft set of rules released January 23, 2001 included a draft version of the service quality reporting rule, then numbered WAC 480-120-535, which would have required “local exchange companies with fifty thousand or more access lines” to file monthly service quality reports.<sup>3</sup> This draft rule clearly applied service quality

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<sup>2</sup> Comcast’s petition incorrectly asserts at footnote two on page three of the petition that CLECs are exempted from WAC 480-120-105, when in fact CLECs must comply with subsection (1)(c) of that rule.

<sup>3</sup> The draft set of definitions released by the Commission on January 23, 2001 defined “local exchange company” as “a company providing local exchange service.” This draft definition, which clearly includes CLECs, expressly indicated that the draft service quality reporting rule (then numbered WAC 480-120-535) included the

reporting requirements to larger CLECs and ILECs. Comcast's petition suggests that none of the CLECs objected to the service quality reporting rule "because CLECs reasonably believed that the Commission did not intend this rule to cover them." This assertion is also incorrect because in fact, in their comments dated February 14, 2001 in the rulemaking docket, WorldCom states in part:

In regards to service quality performance reporting for CLECs, WCOM believes that CLECs should not be held to the same reporting standards as the ILEC for the same reasons stated above. The imposition of such a requirement would impede competition, not enhance it. (February 14, 2001 Comments of WorldCom Inc. in Docket UT-990146, at p. 1).

Thus, not only were CLECs on notice during the rulemaking proceeding that the Commission intended to apply the service quality reporting rule to CLECs, but CLEC WorldCom commented on this very issue, contrary to Comcast's assertions that "nothing in the rulemaking put CLECs on notice that the Commission intended CLECs to be subject to service quality reporting rules." Comcast petition at p. 5.

### **Conclusion**

In summary, for the reasons outlined above Public Counsel respectfully requests that the Commission deny Comcast's petition for an interpretive statement or declaratory ruling that CLECs shall be exempted from the service quality reporting requirements established in WAC 480-120-439, or other relief as sought in Comcast's October 2, 2003 petition, and order Comcast to comply with WAC 480-120-439 as adopted by the Commission. In addition, for the reasons set forth herein, Public Counsel also recommends that the Commission deny Comcast's petition for mitigation of penalties in docket UT-031459. Granting Comcast's petitions would substantially weaken the service quality reporting rule and is not in the public interest.

Sincerely,

Simon J. ffitc  
Public Counsel Section Chief

CC: (via e-mail)  
Glenn Blackmon  
Shannon Smith  
Judy Endejan

Letter to Carole Washburn  
October 21, 2003  
Re: Docket Nos: UT-031626 & UT-031459  
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Rhonda Weaver