

**Before the
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of)
)
Request for Comment on Consideration)
Of an Emergency Rulemaking to Change) Docket No. UT-030860
The Effective Date of WAC 480-120-174)
From July 1, 2003 to June 11, 2003)
_____)

Richard A. Finnigan
The Law Office of Richard A. Finnigan
2405 Evergreen Park Dr., SW, Suite B-1
Olympia, WA 98502
(360) 956-7001

COMMENTS OF:

TEL WEST COMMUNICATIONS, LLC

*Counsel for Tel West Communications,
LLC*

June 9, 2003

SUMMARY

Tel West Communications, LLC (“Tel West”) presents these Comments in response to the request of the Washington Utilities and Transportation Commission (“WUTC”) and as a result of the emergency rulemaking of the Department of Social and Health Services (“DSHS”), as evidenced by WAC 388-273-0035, which drastically altered the level of compensation DSHS

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would pay Tel West for its customers receiving services through the Washington Telephone Assistance Program (“WTAP”).

The WUTC’s alteration of the effective date of WAC 480-120-174 does not address the pressing issue associated with DSHS’s emergency rulemaking as evidenced by WAC 388-273-0035. As a result, although Tel West wishes to provide these Comments to help the WUTC address the actual problem presented to Tel West, it sees no value in the alteration of the date as proposed by this docket. Tel West recommends that a separate emergency docket be immediately opened to address the loss of revenue that will likely force Tel West (and others) to immediately cease operations to certain customers in Washington receiving telecommunications services through WTAP.

INTRODUCTION

Tel West is a telecommunications company that provides a valuable service to a segment of Washington’s population that most other local exchange carriers (“LECs”) do not wish to serve. Tel West specializes in providing reliable local telecommunications services to customers with poor credit who are, therefore, at higher risk of defaulting on their obligations. Many of Tel West’s customers have previously defaulted or been denied service from other LECs in Washington such as Qwest, Sprint and Verizon. As a result of the much higher risk and additional costs Tel West

must incur to serve this segment of Washington's population, Tel West must charge higher rates than LECs like Qwest and Verizon.

Tel West's price list is on file with the WUTC and the WUTC is knowledgeable about what Tel West's rates are and the market that it serves. In short, if Tel West did not charge higher rates, it could not afford the added risk and costs associated with providing service to this segment of society that cannot obtain telecommunications services from other LECs like Qwest, Sprint and Verizon. The WUTC's familiarity with these facts is important in light of recent events that have drastically altered Tel West's ability to provide these services.

The WUTC has worked with Tel West for more than a year as Tel West has attempted to comply with every requirement the WUTC has imposed, including the requirements to provide services to customers receiving assistance under WTAP through DSHS. Tel West has made every effort to comply with RCW 80.36.410 through RCW 80.36.475, which govern Tel West's WTAP obligations.

However, DSHS passed WAC 388-273-0035 and made its effective date June 1, 2003. DSHS did not allow any time for comment. It did not inform Tel West of either the proposed rule or the emergency rule after it was made effective. Tel West found out about it from a third party. This is true despite the fact that Tel West has worked closely with DSHS over the past year to ensure that Tel West was in compliance with DSHS rules regarding the WTAP. DSHS's newly

enacted WAC 388-273-0035 creates a necessity for Tel West to immediately cease service to many, if not all, WTAP customers, as explained below.

Tel West currently has approximately 6,200 customers that are receiving WTAP assistance. Under WTAP, customers are only required to pay Tel West \$4.00 per month for service. As the WUTC is aware, Tel West cannot provide service for \$4.00 per month and still survive financially. As a result, since the beginning of Tel West's participation in the WTAP program, DSHS has reimbursed Tel West \$50.00 for each WTAP customer Tel West serves. However, as explained above, DSHS passed an emergency rulemaking, effective June 1, 2003, that reduces the amount DSHS will pay Tel West for WTAP customers from \$50.00 to \$5.00 per month. Even with federal funds and the \$4.00 paid by the WTAP customers, the total compensation to Tel West under DSHS's emergency rule WAC 388-273-0035 is \$18.50. This results in a deficit of \$35.50 for Tel West per WTAP customer per month (taking into account the effect of the federal SLC). Thus, in one month, Tel West will lose roughly \$220,000.00, totaling over \$2,600,000.00 a year. Tel West cannot afford that kind of a loss.

There are other problems associated with DSHS's emergency rulemaking as evidenced by WAC 388-273-0035. In some areas served by Tel West, the wholesale rates for unbundled network elements ("UNEs") that Tel West leases from Qwest and Verizon are actually higher than the retail rates for services to telecommunications customers of these ILECs. Thus, if DSHS sets

the amount of compensation that Tel West can recover from its WTAP customers based on the ILECs' retail rates, Tel West will again lose significant revenue and be unable to provide services.

With this background in mind, Tel West responds to the WUTC's specific questions posed in its Request for Comment:

1. Is there an actual risk that some WTAP eligible customers may lose access to 911 services as the result of an abrupt discontinuation of service?

As outlined above, Tel West is financially unable to provide services to WTAP customers at the rate established by DSHS's emergency rule as found in WAC 388-273-0035. As a result, unless the WUTC takes immediate action, Tel West will have to cease providing services to WTAP customers. Given the fact that Tel West's customers are high risk customers that are not likely to obtain telecommunications service from other LECs, if Tel West does not provide these services, it is likely that they will not have access to 911 services, unless Qwest, Sprint and Verizon allow disconnected customers to continue to access 911.

2. How many WTAP eligible customers may be at risk of a sudden cessation of service?

As stated above, Tel West currently has 6,219 customers receiving service through WTAP. All of them are in jeopardy of losing service as a result of WAC 388-273-0035.

3. How much time will it take a customer to find and be connected by an alternative local exchange company?

As explained above, Tel West's customers may have a very difficult time obtaining telecommunications service from other LECs. Many of Tel West customers have already been rejected for service from other LECs as a result of either inability to pay or previous termination

history. As a result, these customers will probably not be able to induce companies like Qwest or Verizon to provide service.

4. Would a change in the effective date for WAC 480-120-174 assist WTAP eligible customers who may experience discontinuation of service with little or no notice?

As currently drafted, WAC 480-120-174 would have no effect on whether Tel West is able to continue to provide services to its WTAP customers. WAC 480-120-174 does nothing to address the tremendous financial delta created by WAC 388-273-0035.

5. What is the number of WTAP customers that may be assisted rapidly in obtaining substitute service by adoption of an emergency rule to change the effective date of WAC 480-120-174 from July 1, 2003 to June 11, 2003?

Tel West is unable to ascertain how changing the effective date of WAC 480-120-174 will result in any benefit to any of its WTAP customers. Tel West believes that few, if any, WTAP customers would be able to switch service providers rapidly, due to their credit and payment history problems with the ILECs, as discussed above. It also seems like that other providers similar to Tel West would have equal difficulty providing service to these customers under the new DSHS rules.

6. **Does a risk of discontinuation of service to WTAP eligible customers warrant the immediate adoption, amendment, or repeal of a rule necessary for the preservation of public health, safety, or general welfare such that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest?**

Yes. There must be an immediate action that relieves Tel West of the tremendous financial burden that it is unable to bear as a result of WAC 388-273-0035. This is in the best interest of the WTAP customers' health, safety, or general welfare.

CONCLUSION

Tel West is providing a service that most other companies refuse to provide. However, there is a price associated with the added risk of serving this segment of Washington's population. WAC 388-273-0035 ignores this price. As a result, Tel West is unable to continue providing the service in most instances.

Respectfully submitted on June 9, 2003.

RICHARD A. FINNIGAN, WSBA #6443
Attorney for Tel West Communications, LLC