November 23, 2004

VIA ELECTRONIC MAIL

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

Re: WA UT 040015
MCI's Comments

Dear Ms. Washburn:

MCI, Inc., on behalf of its regulated subsidiaries in Washington, hereby provides the following comments in response to the Commission's November 2, 2004 Notice of Opportunity to File Written Comments in this docket.

As an initial matter, MCI incorporates by reference herein its comments in response to the Commission's previous Notices soliciting comments in this proceeding. In these comments, MCI specifically addresses only one of the proposed rules pending before the Commission, WAC 480-120-034.

WAC 480-120-034 – Classification of local exchange companies as Class A or Class B. The proposed rule does not incorporate MCI and others' comments requesting that the Class A/B distinction not apply to companies classified as competitive. MCI continues to believe that the reporting requirements should not apply to competitive local exchange carriers.

As stated in our previous comments, MCI recommends that the Commission modify the rule to exempt competitive local exchange carriers, particularly non facilities based carriers, from reporting requirements. MCI provides local residential service in Washington through the purchase of UNE-P from Qwest and Verizon. At this time, MCI does not provide local residential service to any customers in Washington through the use of the company's own network facilities. Qwest and Verizon prohibit physical access to their network

equipment to UNE-P wholesale customers. Thus, UNE-P providers are reliant on these incumbents to install the UNE-P providers' end user customers' service as well as to maintain and repair their customers' service. UNE-P providers like MCI have no direct control over the provisioning and maintenance of the underlying facilities they use to offer UNE-P based service in Washington. Under these circumstances, service quality reporting requirements should not be imposed on non facilities based CLECs.

Further, if the Commission exempts CLECs from the reporting requirements, the public interest would be adequately protected by competitive forces and the Commission's regulatory oversight. As a competitive carrier, MCI is driven by market forces to provide timely service to its customers, where such service is within MCI's control. Because Washington customers are able to vote with their feet and switch carriers, MCI has a competitive incentive to provide service quality that meets and exceeds its customers' expectations whenever the underlying service is within MCI's control. With the presence of market-based incentives, no need exists for regulatory incentives such as service quality reporting.

That said, if the Commission were to reject MCI's recommendations to exempt CLECs from the definition of Class A companies altogether, MCI asks the Commission to modify the proposed rule. The current draft of the rule reads as follows:

> **WAC 480-120-034 Classification of local exchange companies as Class A or Class B.** (1) Each local exchange company is classified as a Class A company or a Class B company, based on the number of access lines it provides to Washington state customers.
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> (2) The classification of a company as Class A or Class B is made without respect to the company's classification as a competitive company under RCW 80.36.320.
>
> (3) For purposes of classifying a company as Class A or Class B, the number of access lines served by the local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.
>
> (4) Any company whose classification as Class A or Class B changes, due to a change in the number of access lines served, a change in affiliate relationships, or other reason, must notify the commission secretary of the change in classification within thirty days after the end of the month in which change in classification occurs.
>
> (5) By July 1 of each year, the commission will publish on its website the total number of access lines served by local exchange

companies in Washington, based on information reported by companies for the previous calendar year, and a calculation of the two percent threshold.

With regard to section (4) above, MCI has several recommendations. First, the Commission should adjust the language to require a party to satisfy the 2% threshold in three consecutive months prior to requiring that it report itself to the Commission as a Class A company. Second, if the carrier falls below the 2% threshold in any month, the reporting requirement should cease to apply. Third, the carrier should not be obligated to file reports consistent with Class A requirements until January 1 of the year following its satisfaction of the 2% threshold standard. Fourth, although the Commission does not regulate wireless carriers, for this rule, the number of wireless access lines should be included in the total statewide access line count for purposes of the 2% calculation.

To comply with the reporting requirements imposed on Class A companies, MCI would be required to incur significant expense to implement processes and systems that it does not currently utilize. MCI would also need to dedicate resources to the task of reporting consistent with the rules. In addition, MCI's local access line counts vary on a monthly basis.

Modifying the proposed rule to require that the carrier satisfy the 2% threshold in three consecutive months would help to minimize situations where a carrier is required to invest in the systems and personnel to comply with the rules where it does not maintain the minimum number of access lines on a consistent basis over time.

Allowing carriers until January 1 of the year following qualification as a Class A company provides carriers time to invest in and implement the systems and processes necessary to comply with the new reporting requirements.

Competition from wireless phones now exists in the local exchange market in Washington, particularly in the residential market. Wireless line counts steadily increase as wireline access line counts decrease. Including wireless access lines in the total number of statewide access lines would help to ensure that only those carriers with a particular share of the total statewide local market are burdened with the additional reporting requirements. Although the significance of the 2% threshold is not clear to MCI, it recognizes that the Commission regards 2% as an access line threshold that applies to "large" telecommunications carriers. Excluding wireless access lines from the statewide total ignores the significance of wireless competition to wireline local services in Washington.

For all of these reasons, MCI respectfully requests that the Commission modify the proposed rule. Thank you for the opportunity to provide comments.

Sincerely,

Michel L. Singer Nelson