

October 5, 2001

VIA ELECTRONIC MAIL

Carole Washburn, Secretary
Docket No. UT-010558
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7350

Re: UT-010558 – Cessation of Telecommunications Service

Dear Ms. Washburn:

This letter is being submitted in support of adoption of UT-010558 – Cessation of Telecommunications Service (“UT-010558”) the permanent rule proposed by the Washington Utilities and Transportation Commission (“WUTC”). UT-010558 will require all telecommunications providers doing business in Washington to provide 30-day advance notice of cessation of service to customers, local carriers, number administrators, the E-911 program, and WUTC.

As you are aware, UT-010558, if adopted, will make permanent emergency rule WAC 480-120-083, albeit with several additions. The emergency rule, enacted on May 10, 2001, and extended by an additional emergency order of September 7, 2001, was passed in response to the possible sudden cessation of local telephone service due to an exiting service provider. Such a service break would have cut off 911 access to many Washington customers. Due to the potential threat this potential break posed to public safety, the WUTC passed the emergency order, and required a business to give 30 days notice of termination to customers, to other telecommunications companies with which it did business, and the WUTC. This rule applied only to a limited group of telephone service providers. Such notice was intended to allow customers time to obtain alternate service and avoid any dial tone interruptions. Adoption of the more extensive proposed rule that requires all telecommunications companies (long-distance and digital line providers included) to comply with the cessation notice would even better serve the interest of the Washington public.

First, it is important to note that the WUTC is authorized to create such rules under statute. Specifically, the WUTC is empowered to “[r]egulate in the public interest...the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities; including...telecommunications companies,” and it may enact rules and regulations that “may be necessary to carry out its other powers and duties.” RCW §80.02.040(3) and (4). Additionally, RCW §80.04.160 authorizes the WUTC “to adopt, promulgate, and issue rules and regulations covering the transmission and delivery of messages and conversations” for the “comfort and convenience of the public.”

These statutes clearly rest authority to regulate utility industries on behalf of Washington citizens with the WUTC. In proposing this rule, the WUTC is acting on behalf of the Washington public, to ensure that a service that is seen as essential to Washington citizens, remains reliable. Given the broad discretion under the enabling statute, the WUTC does not need to go beyond this reason to justify UT-010558. Indeed, there have been no challenges to the proposed permanent rule based on a violation of WUTC's statutory power or duties to date.

In addition, any due process claims made in opposing UT-010558 will not succeed. The WUTC rulemaking process has complied with the applicable sections of the Washington Administrative Procedure Act ("WAPA"), RCW §§34.05.310 – .395. Once the WUTC determined that the emergency rule should be adopted on a permanent basis, it held an open hearing on June 28, 2001, seeking comments from all interested parties. It then sought supplemental comments from those business most impacted by the rule. Written comments from all stakeholders and the public were requested with the publication of the proposed rule on August 29, 2001. Finally, the WUTC will hold an open meeting on November 16, 2001, and will allow for any comment in support of or in opposition to UT-010558. This detailed, although informal process, will likely prevent any challenges based on lack of notice to be heard.

Because any statutory or due process challenges to UT-010558 would likely fail, the only remaining arguments to be made by those opposing adoption of the rule would be policy-based.

Several telecommunication firms that supported the limited application of emergency rule now argue against adoption of the broader proposed rule as burdensome. First, from a cost assessment perspective, such claims are unfounded. The results of the Small Business Economic Impact Statements ("SBEIS"), conducted in compliance with RCW §19.85.040, showed that of the 33 companies that responded to the SBEIS, only two expected negative financial impact due to adoption of UT-010558. Neither of these providers could be specific about how the proposed rule would damage their business.

Moreover, the estimated costs of implementing the measures that UT-010558 would impose are not excessive, nor are they prohibitive to telecommunications companies servicing Washington. This is especially true considering the benefits that such cessation requirements will bestow on Washington citizens. UT-010558 states that consumers and businesses in Washington rely upon telecommunications services "for access to emergency and E911 services, doctor, clergy, schools, businesses, customers, vendors, and community resources." The extra cost imposed on the remaining service providers in the state is of lesser importance than providing Washington citizens and business with access to reliable modes of communication.

Finally, the companies opposed to this statute have suggested that implementation of the UT-010558 will unnecessarily interrupt the natural progression of the marketplace, as other businesses seek to replace the service previously offered by an exiting company. However, allowing the market to manage the exodus of telecommunications companies would not guarantee that telephone service would remain uninterrupted for many Washington consumers. If a consumer is not aware that service will terminate, he or she will not be able to decide on a successor supplier without experiencing disruption of service. The entire purpose of UT-010558

is to see that such disruptions do not occur, as they have been determined to have an adverse impact on Washington consumers.

According to agency findings, thirty-three telecommunications companies have filed notice to terminate services in Washington so far this year. The potential for interruption of telephone and related services to the public from the withdrawing of this number business is great. The WUTC should enact this permanent rule to prevent any termination or disruption of service to Washington individual and businesses.

Regards,

Julie Stormes
Seattle, Washington