BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

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| In The Matter of | ) | |
| Rulemaking Concerning | ) | Docket No. UT-991737 |
| Line Extension Tariffs | ) | |
| | ) | |

## COMMENTS OF AT&T

AT&T Communications of the Pacific Northwest, Inc. ("AT&T") submits these comments pursuant to the Notice of Opportunity to Submit Written Comments on Proposed Rule dated May 4, 2000.

AT&T's position is that this proposed rule, and particularly Subsection (3), is in violation of § 254 (b) of the Federal Act and in contravention of Washington state law. However, as discussed below, AT&T would refrain from further opposition to the proposed rule contingent upon the insertion of certain language in the Commission's Order.

### The Proposed Rule Is In Contravention of the Law

AT&T incorporates and reiterates the comments that were previously filed on March 14, 2000.

It is stated in the short explanation of this proposed rule that "the purpose is to … implement policies established by Congress." The main policy objective of the 1996 Telecommunications Act (the "Act") was to foster competition within the telecommunications industry. A cost recovery scheme, as would be implemented under this proposed rule, does not foster competition; rather it unfairly singles out and burdens

certain providers in a discriminatory manner.

The unstated essence of the cost recovery scheme is universal service as contained in § 254 of the Act. But whereas § 254 is to be read within the context of the Act as a whole, this proposed rule's cost recovery section is without regard to that same context. This proposed rule borrows selectively from the Act and ignores the contextual concepts, and statutory guidelines, that are part and parcel of what has been borrowed.

Ironically, AT&T finds itself in agreement with a filed comment from U S WEST. To wit: "Parties may further contend that the proposed rule violates § 253 and § 254 of the Telecommunications Act of 1996 and RCW 80.36.610 (2)(a) because fewer than all providers of intrastate telecommunications will be called on financially to support universal service under the proposed rule." See Comments of U S WEST, p. 2, filed on March 14, 2000. U S WEST recognizes the discriminatory obligation being imposed. As an interexchange carrier that will have to bear the support yoke, AT&T concurs with U S WEST that the cost recovery mechanism is indeed in violation of federal and state law.

## The Proposed Rule Will Have An Impact On AT&T

AT&T takes exception to the statement contained in the Small Business Economic Impact Statement ("SBEIS"), dated April 26, 2000, that "[a]s a result of the provision allowing all companies to recover their costs through an increase in access charges, the *rule as a whole would have minimal impact on companies*." See, SBEIS, p. 3 (emphasis added).

Pursuant to the proposed rule, an additional service extension element in the terminating access tariffs will recover the cost of a service extension which includes "the direct and indirect costs of the material and labor to plan and construct the facilities including, but not limited to, drop wire, permitting fees, rights of way fees, and payments to subcontractors…." Proposed Rule, Subsection (3)(a).

Here is a scenario under the proposed rule: GTE or U S WEST files a tariff after permits have

been issued for construction. They have twelve (12) months to complete an extension. Upon that tariff filing they have the right to "recover" up to 50% of their estimated cost of the extension and the remainder of the cost upon completion. Because the terminating access tariff recovers the cost of the service extension, AT&T and other toll providers will find themselves implicitly subsidizing, through terminating access charges, the value of GTE's and U S WEST's networks and as an added insult, subsidizing it up front.

Thus, the statement that the "rule as a whole would have minimal impact on companies" may certainly be true as applied to the LECs. But the quantifiable impact is less certain as to those interexchange providers who are charged with an unfair burden imposed by the rule's discriminatory cost recovery scheme.

Neither is AT&T comforted by Staff comments to the effect that "[b]ased on the information now available to us, we believe that the net effect on AT&T and other interexchange carriers will be minimal." See, Staff's Online Document, dated April 12, 2000, p. 3. AT&T is uncertain of the monetary magnitude. It could indeed be minimal. However, from the viewpoint of a payer of terminating access charges, a *prima facie* reading of the language of Subsection 3 would suggest otherwise.

An additional, if not primary, concern of AT&T's is the precedential effect of the cost recovery section of this proposed rule. As was previously stated in our comments filed in this docket, subsection (3) of the proposed rule violates both federal and state law. Those comments stated that federal law is contravened because the "proposed rule continues to recover **all costs of universal service** through access charges in violation of the mandate of Section 254(b)(4) of the Federal Act that **all providers** should bear these costs in an equitable and non-discriminatory manner. Establishing this rule would also violate the statutory directive in Section 254(f) that a state commission may adopt only rules consistent with the Act." See AT&T's Comments filed March 14, 2000.

Those previously filed comments also discussed the violation of state law. "[T]he abrogation of the Commission's responsibility to review earnings conflicts with state law. The Commission is required to assure that all rates are 'fair, just, reasonable and sufficient.' RCW 80.36.070." *Id.*

Washington law further provides that "Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the

preservation and advancement of universal service in the state…." RCW 80.36.610(2)(a). The proposed rule's cost recovery mechanism to provide universal telecommunications service singles out those carriers that pay terminating access charges. Such a mechanism is not equitable and does discriminate, by singling out those carriers who pay access charges.

The Commission cannot flout the Federal rules simply by removing to the jurisdiction of the state. To allow otherwise would be to establish the rule that one must adhere to the law when in one setting, but not when in the other. The Commission, in its earnestness to bring telecommunications to the unserved areas, is opening up a "Pandora's box" when it puts in jeopardy the principle of Federal law.

If the Commission is not persuaded that the monetary effect upon AT&T and other interexchange carriers is more than minimal, then it should seriously consider the effect in violating Federal law.

## AT&T's Recommendations To The Commission

AT&T certainly understands the purposes of the proposed rule in extending telecommunication services, and appreciates the difficulty that the Commission faces in achieving such purposes. However, such purposes, no matter how laudable, should not be achieved through a discriminatory cost recovery scheme that requires the interexchange providers to implicitly subsidize the further build out of the LECs' networks and that contravenes Federal as well as Washington state law.

Despite its stated position, AT&T would not oppose the proposed rule if the Commission, in its Order, would add the following language:

> That this proposed rule is understood by all participants to be an interim or temporary "fix" to the problem of providing telecommunications services to those unserved areas until such time that the state of Washington establishes a state Universal Service Fund ("USF"), and
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> Upon the establishment of such a state USF there will be a true up of the interexchange carriers' contributions to such fund. More specifically, a credit will be issued for the access charges paid as a result of the service extension element added to the terminating access tariffs to subsidize the extension of lines to unserved areas. The credit will be used to offset what would be the interexchange carrier's portion of a state universal service fund, under a competitively neutral cost mechanism.

Note that AT&T would not be made "whole" in an economic sense under our suggested language, due to the time value of money. AT&T is willing to forego this

incremental loss in order to assist the Commission in achieving the results, which are the intent of the proposed line extension rule.

Such addition of language is rational where the state of Washington is without a state USF and the Commission needs to use "backdoor" mechanisms such as the Interim Terminating Access Rates, and in the instant case, an additional service extension element to the terminating access tariff charges. To later charge the interexchange carriers with a full surcharge into a state USF, without a credit for amounts paid through the service extension element, would be inequitable, discriminatory and unlawful.

Respectfully submitted on May 25, 2000.

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