

April 24, 2001

Carole J. Washburn, Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia WA 98504

Re: Proposed Emergency Rule - WAC 480-120-083,
Cessation of Certain Telecommunication Services

Dear Ms. Washburn:

This is the Washington Independent Telephone Association's (WITA) response to an April 23, 2001 E-mail from the Commission Staff regarding proposed WAC 480-120-083, Cessation of Certain Telecommunications. We think the proposed rule is a vintage, custodial approach to dealing with a fresh and developing market where customers have competitive choice and carriers have freedom to enter and exit. We do not support adoption of this rule on an emergency basis.

We do not think all telephone ratepayers should have to protect some consumers from bad choices in a competitive market. Even though these predominately business customers have probably benefited from competitive pricing, this proposal will ensure that same customer will get continued service, no matter what it costs, if their service provider of choice goes out of business or exits the market.

In the competitive market, the customer runs the risk that his or her competitive choice may not work out. There is no rule to "bail them out". We feel the responsibility should be placed upon the customers – not companies – for insuring that they have the "covered services" addressed by this rule. Which brings us to a concern about the services covered by this rule.

We understand there may be some concern about customers having access to "universal services" as defined in federal law. Thus we could support that companies ceasing "local exchange service" may require some extra attention and notification rules. However, the other services covered in this rule - PBX, Centrex and Private Line services are advanced services and as such should not require WUTC protection or special rules.

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We believe the rule should be addressed thoroughly and not adopted on an emergency basis. We believe the rule needs some technical changes, especially differentiating between companies facing bankruptcy and companies making business decisions to exit or cease services. Finally we think the rule has significant legal issues that need to be examined.

WHAT IS THE EMERGENCY THAT REQUIRES THIS RULE BE ADOPTED NOW?

In order to invoke the Emergency Rule, it is our understanding that an emergency must be declared substantiating the impact on public health, safety or general welfare. WITA would like to know more about the facts and how they warrant an emergency declaration by the WUTC. WITA is aware of one company shutting down purportedly by bankruptcy. We think that can be handled without adopting an emergency rule. We know of no other companies on the brink of shutting down in Washington State. Without such facts, this Commission should not proceed on an emergency basis. If it wishes to adopt such a rule, such rule should proceed through regular rulemaking channels. This rule should not be adopted without additional input from impacted industry members and the public.

THE LEGAL AUTHORITY REGARDING THIS RULE NEEDS COMMENT.

While we are sure the intent is to address intrastate services in this rule, it needs to also make that clear in section (1).

This rule proposes that all companies assist the WUTC in finding alternative covered services for customers of the company ceasing service. It also provides that a new service provider (company) may be forced to take customers without setting up arrangements between the new company and that customer. Customers and the companies will want to know how they will do business with each other. In some cases, payment arrangements for unpaid balances will need to be arranged before service is provided. Such a forced arrangement has profound implications for both the carriers and the customers and, any rule requiring such an arrangement should not be adopted hastily.

Section (8) does not require that a telecommunications company be compensated for either recurring or non-recurring charges for providing a "lost covered service." Being obligated to provide such a service for up to forty-five (45) days needs to define how compensation will work before the rule is adopted.

This proposed rule also imposes new obligations upon ETCs and raises questions about the Commission's selection of which carrier will be tagged with providing service for "stranded" customers.

Technically, the Proposed Rule simply will not work if the company exiting the market is facilities based, because those customers would have no underlying carrier to

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continue providing service for the proposed interim forty-five (45) day period. In buildings where only one company provides service, another company probably could not install or take over another company's assets to provide service for the proposed interim forty-five (45) day period.

AS A PRACTICAL MATTER, DIFFERENTIATION MAY BE NECESSARY

The rule does not make any distinction between companies who are making a business decision to exit a market or service and a company who is exiting due to financial ruin.

Companies who are making a business decision to exit a market or service probably can give: (1) WUTC and customers 30 days notice, (2) follow-up telephone calls to those customers who have not responded 5 to 7 days before the service ceases, and (3) a report to the WUTC of the remaining customers 24 hours before the service ceases. However, these efforts are labor intensive and expensive. More input and process will ensure that what we are asking the company to do and provide will be helpful to the customer and used by the WUTC. We do note that circuit identification records and customer service records are not normally provided to anyone outside the company and section (3 b) would be a concern.

Companies forced to go out of business may do so consistent with the provisions of Federal Bankruptcy Law. The Proposed Rule may interfere with a debtor's rights under those laws to cease operations and we would want to check this out before the rule is adopted. Practically, if a company has gone out of business it is doubtful that the Commission could enforce the notice obligations required by the new Rule. One could suppose that the WUTC could fine the company and become another creditor in the bankruptcy. While we know this is not the intent, it does raise the practical question about enforcement against a company who is already in dire financial conditions and probably does not have the employees or the resources to comply with this rule.

CONCLUSION

In conclusion, WITA urges the Commission to not take action on an emergency basis to adopt this rule. We do see the merit of an orderly exiting of the market after appropriate notice to customers and the provision of opportunities for customers to obtain alternative local exchange service. We would participate and support a workshop and rulemaking to address this worthwhile issue. We urge the WUTC to take the time to produce an insightful and scrutinized proposal.

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Sincerely

Terry Vann