

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

COMCAST PHONE OF
WASHINGTON, LLC

Application for Mitigation of Penalties
or for Stay

DOCKET NO. UT-031459

DECLARATION OF
GLENN BLACKMON

Glenn Blackmon, declares as follows:

1. I am the Assistant Director for Telecommunications of the Washington Utilities and Transportation Commission (WUTC). My business address is 1300 S. Evergreen Park Drive S.W., Olympia, Washington, 98504.

2. I am responsible for the overall management of the WUTC's regulation of telecommunications companies. This includes activities to provide advice and assistance to regulated companies regarding the requirements of Washington statutes, rules, and WUTC orders. It also includes activities to ensure compliance with those requirements. I also was actively involved in the extensive process by which the WUTC developed and ultimately adopted its service quality performance rules and its service quality reporting rule (WAC 480-120-439).

3. Until July 1, 2003, the WUTC's service quality reporting rule did not use the term "Class A company." It required that any company with more than 50,000 access lines submit monthly service quality reports. However, because of the statutory exemption from most reporting requirements for small companies in RCW 80.04.530, in practice the minimum threshold for the service quality reporting requirement was 2 percent of the state's access lines.

4. During the period from January 1, 2003 until July 1, 2003, Comcast Phone had more than 2 percent of the state's access lines. It did not file the service quality reports required by the WUTC rules in effect during that time.

5. My first conversation with Comcast Phone's Director of Governmental and Regulatory Affairs, Ms. Rhonda Weaver, about the 2 percent threshold for service quality reporting occurred well before July 17, 2003. Ms. Weaver was employed in a similar position by Comcast Phone's predecessor, AT&T Broadband (AT&T), and in that capacity I discussed with her as early as 2001 the requirements that would apply once AT&T's various subsidiaries collectively served more than 2 percent of the state's access lines.

6. During the period from December 2002 until July 1, 2003, when Ms. Weaver states that she was reviewing the revised rules to ensure compliance by Comcast Phone, neither Ms. Weaver nor anyone else from Comcast Phone asked me or other members of the WUTC telecommunications section for assistance in interpreting

whether the term "Class A company" included competitive local exchange companies such as Comcast Phone. Had Comcast Phone asked this question, I would have told the company that the term includes all local exchange companies with more than 2 percent of the state's access lines, without regard to their competitive status.

7. Comcast Phone submitted its annual report for 2002 on about May 1, 2003. The report stated that Comcast Phone had 117,535 access lines as of December 31, 2002.

8. I do not review the annual report filings as part of my normal activities. Therefore I was not aware of this reported line count until Ms. Weaver told me about it in early July. I then compared this number to the number of access lines that the Federal Communications Commission reported for Washington, and I found that Comcast Phone was well above the 2 percent threshold. I asked Robert Williamson, a WUTC telecommunications engineer who monitors service quality performance, to remind Comcast Phone of the requirement to file service quality reports. He did this through an e-mail to Ms. Weaver in mid-July 2003.

9. Ms. Weaver's statements at paragraph 7 of her declaration about the difficulties of determining the total state access lines using company annual reports are largely accurate. There are a lot of reports, and several of them are designated as confidential. For these reasons, the WUTC telecommunications staff generally advises companies to rely on the access line counts published by the Federal Communications Commission. These tend to understate slightly the actual number of lines in the state,

because any company with fewer than 10,000 lines is not required to report its count to the FCC. I offered this same advice to Ms. Weaver.

10. Ms. Weaver is correct at paragraph 7 of her declaration in stating that I said the staff “could compile the total access line number.” She is incorrect in stating that I refused to do so. Rather, I noted that the effort of attempting to make a more accurate count would ultimately make no difference, because Comcast Phone was so far above the 2 percent threshold. I also said that the staff would nonetheless undertake this effort. We did so, and after many hours of work we published the result on October 30, 2003. The result was 4,090,455 access lines in the state, slightly more than the FCC figure of 3,960,744. The 2 percent level therefore is 81,809 lines, and Comcast Phone is 43 percent above the threshold.

11. During the time from mid-July to mid-September, Mr. Williamson and I on numerous occasions discussed with Comcast Phone the interpretation of WAC 480-120-439, the meaning of the term “Class A company,” and the calculation of the 2% threshold. I repeatedly and consistently advised the company that it should either comply with the rule or make a formal filing to confirm its belief that the company was not required to report.

12. By the time I recommended the penalty assessment to the commissioners, Comcast Phone had missed several informal commitments to petition to the WUTC for

a clarification. At that point I had no reason to believe that Comcast Phone would take any action to resolve a non-compliance issue that had been pending for two months.

13. Comcast Phone's allegation that the WUTC refused to provide education and assistance is wrong. At every meeting with Comcast Phone regarding this issue, I have offered to provide the company with technical assistance in achieving compliance with the rule. I have encouraged and even directly requested that Comcast Phone include an employee with operational expertise and responsibility in our meetings, but the company has never done so. I also have explained the options of developing an alternative reporting mechanism, as provided for in WAC 480-120-439(12), and of seeking a partial or complete exemption from the rule, as provided in WAC 480-120-015.

14. At paragraph 8 of her declaration, Ms. Weaver states that staff never indicated prior to September 15 that it would seek a penalty for Comcast Phone's noncompliance. This is inaccurate. I told Ms. Weaver in August that, since the staff and the company could not resolve their difference about the interpretation of the term "Class A company," the dispute should be resolved by the WUTC. I said that either the company should file a petition or the staff would ask the commission to file a complaint. Ms. Weaver committed at that point for the company to file a petition; it did not keep this commitment. Comcast Phone was not acting in good faith to resolve the issue when the WUTC issued the penalty assessment.

15. Despite Comcast Phone's claims to the contrary, it is not unreasonable for the WUTC to require that competitive companies report their service quality performance. Comcast Phone makes two basic arguments against a reporting requirement: (1) It is unreasonable to require a report when the company is exempt from the underlying performance standard that corresponds to the report, and (2) Comcast's customers can switch to another provider if its service is poor. The first argument is at best incomplete, because Comcast Phone is not exempt from every performance standard. More importantly, the commissioners' decision to exempt competitive companies from some standards was linked to their decision to require reporting as a diagnostic exercise. This was a reasonable resolution of the issue of whether to impose performance standards on competitive companies, and it allowed the WUTC to monitor competitive company performance over time. If performance were to slip, the commissioners could reconsider the decision to exempt one or more competitive companies from the performance standard. This possibility of re-imposing the standard is explicitly stated in WAC 480-120-105(4).

16. The second argument, that customers can switch if they get bad service, is also incorrect. In essence, this argument is that customers can obtain service quality information by switching to a new company, experiencing that company's level of service, and switching again if the service level is inadequate. This approach is burdensome and expensive for the customer. Without service quality reports,

customers will have only anecdotal information about service quality. They will have a little information about the quality of their own service, but since outages and delays are infrequent even with mediocre service, a single customer's experience says very little about what level of service the customer could reasonably expect to receive in the future. Moreover, if the customer is currently served by another company, he will have no direct experience upon which to judge expected future performance. If the customer ultimately decides to switch providers because of bad service, he will incur expenses and potential interruption of service. In summary, a lack of accurate information about service quality performance hinders competition, because it deprives customers of the ability to make informed choices among providers that may differ significantly in service quality.

17. I agree with Ms. Weaver's statement at paragraph 13 that Comcast Phone does not have a pattern of consumer complaints regarding the service quality measures covered by WAC 480-120-439. However, that is irrelevant to the issue of whether Comcast Phone is subject to this rule. The commissioners considered and rejected the suggestion that only companies with bad service should report. If Comcast Phone wants to resurrect this approach, it should propose a revision to the rule.

18. I believe that the WUTC telecommunications staff and Comcast Phone could develop an alternative reporting mechanism, as provided for in WAC 480-120-439(12), that would address most of the reporting problems alleged by Comcast Phone.

However, I have been unable to get Comcast Phone to engage in these discussions using subject matter experts at the company and the WUTC. The company has chosen instead to debate repeatedly its interpretation of the term "Class A company." The information provided by Comcast Phone in its petition for an alternative reporting mechanism does not provide a sufficient basis to develop such a mechanism.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Glenn Blackmon

Date signed

Place signed