

[Service Date June 17, 2003]

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Petition of)	
	)	DOCKET NO. UT-030867
BG ENTERPRISES d/b/a GRIZZLY)	
TELEPHONE;	)	ORDER NO. 01
)	
Petitioner,)	
)	
For Waiver of WAC 480-120-081;)	
RCW 80.36.410-475; WAC 480-120-)	
083; and WAC 480-122-120)	
)	
.....)	
In the Matter of the Petition of)	
	)	DOCKET NO. UT-030879
STAN EFFERDING d/b/a VILAIRE)	
TELECOMMUNICATIONS;	)	ORDER NO. 01
)	
Petitioner,)	
)	
For Waiver of WAC 480-120-081;)	
RCW 80.36.410-475; WAC 480-120-)	
083; and WAC 480-122-120)	
)	
.....)	
In the Matter of the Petition of)	
	)	DOCKET NO. UT-030891
TEL WEST COMMUNICATIONS,)	
LLC	)	ORDER NO. 01
)	
Petitioner,)	
	)	ORDER DENYING REQUEST FOR
For Waiver of WAC 480-120-081;	)	EXEMPTION FROM RULES AND
RCW 80.36.410-475; WAC 480-120-	)	STATUTES; GRANTING PARTIAL
083; and WAC 480-122-120	)	EXEMPTION FROM WAC 480-122-
	)	020 and WAC 480-120-139
.....)	

Synopsis: *The Commission grants temporary exemption from two Commission rules to facilitate the transition of customers from competitive telecommunications companies to incumbent telecommunications companies due to changes in reimbursement by the Washington Telephone Assistance Program. The exemption will optimize continuity of service as providers deal with the effect of an emergency rule of the Department of Social and Health Services that caps the amount of public reimbursement for the service at a level substantially lower than previously available.*

I. PROCEDURAL HISTORY

- 1 These petitions came before the Commission at its regularly scheduled open meeting of June 11, 2003. The Commission heard presentations on the topics, then recessed the meeting until June 16, 2003, when it heard additional information and determined to take the action that is implemented in this order.
- 2 Three competitive local exchange companies (CLECs) petition for exemption from Commission rules. Each seeks relief from rules requiring them to provide service to customers in the Washington Telephone Assistance Program, or WTAP, (WAC 480-122-020) and to provide 30 days' notice of cessation of service (WAC 480-120-083) and assert that the relief is justified by the unexpected change in financial circumstances caused by the adoption of an emergency rule by the Washington State Department of Social and Health Services (DSHS).
- 3 DSHS administers the Washington Telephone Assistance Program defined in RCW 80.36.410 through .475. The WTAP fund provides a subsidy for eligible low-income customers. As part of its duties, DSHS by rule determines the level of support that will be provided from the fund to local exchange companies for each WTAP customer. The support level is based on the customary charges for local service, the WTAP customer rate, and the level of federal support for service to low-income customers. DSHS pays WTAP program and

administrative costs of participating local exchange companies and establishes the eligibility of individuals to participate in the program.

- 4 The Commission's role in WTAP is to establish the monthly rate paid by WTAP customers, which currently is \$4, and to establish the excise tax that is assessed on all access lines to fund the program. The WUTC also by rule requires participation in the WTAP program by all local exchange companies that provide residential service to at least 100 customers.
- 5 Since its beginning in 1987, the WTAP program has reimbursed each LEC the difference between the WTAP participants' rate and that LEC's normal charge for local exchange service. For example, a residential customer of Qwest would normally pay \$12.50 per month plus taxes and fees, but a WTAP participant pays Qwest \$4.00 per month. Federal universal service funds provide \$3.50, and the remaining \$5.00 is paid to Qwest from the WTAP fund. A customer of Verizon also pays only \$4.00 dollars of the monthly \$13.00 local exchange bill, and Verizon is reimbursed \$3.50 from the federal program and \$5.50 from WTAP.
- 6 In the 1990s, competitive local exchange companies began offering residential service. In some cases, these companies charged \$50 or more per month for service to customers who, due to unpaid bills or a poor credit history, found it difficult to obtain service from their incumbent local exchange carrier. When the competitive companies served a WTAP-eligible customer, the WTAP program reimbursed the companies for the difference between their higher customary rate and the WTAP client rate of \$4.00.
- 7 On May 30, 2003, DSHS filed an emergency rule with the Code Reviser. The emergency rule made several changes to Chapter 388-273 WAC, Washington telephone assistance program, effective June 1, 2003. The changes included a

limit on reimbursement to competitive local exchange companies.¹ The emergency rule limits reimbursement to the amount that WTAP reimburses the incumbent local exchange company in that exchange area. WAC 388-273-0035. For all exchange areas, reimbursement is limited to not more than \$19.00 for each eligible household. *Id.* The result is a substantial reduction in the reimbursements provided to the CLECs.

8 Stan Efferding, doing business as Vilaire Telecommunications, filed a petition with the Governor under RCW 34.05.350(3) on June 6, 2003, asking that the rule be repealed immediately. The Governor responded on June 13, 2003, denying the petition.

II. PETITIONS

9 On June 5, 2003, BG Enterprises d/b/a Grizzly Telephone (Grizzly) filed a petition for exemption from WAC 480-120-081, which limits the reasons for which a company may discontinue service to a subscriber; WAC 480-120-083, which governs the notice that a company must provide when it ceases to provide service; WAC 480-122-020, which requires telecommunications carriers who serve more than 100 persons to offer service under the WTAP rate; and RCW 80.36.410 through .475, which govern the WTAP program.

10 Stan Efferding, d/b/a/ Vilaire Telecommunications (Vilaire) and Tel West Communications, LLC (Tel West) filed similar requests on June 6 and 9, respectively. Each is filed under WAC 480-120-015, which allows the Commission to exempt regulated companies from the application of Commission rules when doing so is in the public interest.

¹ In addition, in a letter to companies dated May 30, 2003, DSHS said it intends to ask the WUTC to raise the WTAP customer payment rate from \$4.00 to \$8.50 per month; in testimony at the June 16 meeting, the DSHS representative stated that the requested rate might be \$9.00.

11 The petitioners allege that the emergency change in the DSHS reimbursement rule requires the carrier to provide service to WTAP clients at a price below its cost to purchase the underlying service from the incumbent local exchange carrier (ILEC) -- Qwest, Sprint, or Verizon. Each CLEC also alleged that if the request were denied, the CLEC would incur considerable losses, and that a hardship therefore exists. Each asked the Commission to exempt them from the obligation to serve WTAP clients and from the obligation to provide 30 days' notice of its intention to cease providing that service. One of the companies claimed it might lose as much as \$200,000 in one month if the exemptions were not granted.

III. PROCEEDINGS

12 The Commission heard the requests for exemption requests at its regularly scheduled open meeting of June 11, 2003, and recessed the meeting for further consideration of the matter on June 16, 2003.

13 The following persons appeared and made oral presentations at one or both meeting sessions, either in person or on the Commission's telephone bridge line: Thomas Orr and Pat Gordon, Attorneys for petitioner BG Enterprises; Stan Efferding, d/b/a Vilaire; Richard Brady, Attorney for petitioner Vilaire; Richard A. Finnigan, Attorney for petitioner Tel West Communications, LLC; Mark Reynolds for Qwest Corporation; Joan Gage for Verizon Northwest, Inc.; Robert Cromwell, Asst. Attorney General, Public Counsel; Andrea Abrahamson, Washington Protection and Advocacy System; Sandra Ripley, Seattle Telecom Consortium; Mike Maston and Grace Moy, for the Department of Social and Health Services; and Robert Shirley and Glenn Blackmon, for Commission Staff.

14 Commission Staff recommended that the exemptions from the 30-day notice requirement be denied. Staff relied on the Commission's determination, in adopting WAC 480-120-083, that, the thirty-day notice period was the required

time for a customer to receive the notice, consider it, and take action to obtain alternative service. Commission Staff acknowledged that with the reduced reimbursement, petitioners might not cover all their costs, but pointed out alternate means to provide discounted WTAP service that do not require petitioners to pay more for the underlying service than each can collect in customer payments and state and federal reimbursement.

- 15 During the meeting, petitioners amplified the concerns expressed in their petitions. They made it clear that in serving a specialized niche market consisting of customers who find it difficult to obtain alternative service, the company incurs customer turnover, the cost of additional services such as toll blockage, uncollectibles, and administrative costs, beyond the price it pays to the ILEC for the underlying components to provide service. While none said that it would have to stop service entirely if the exemption were not granted, all expressed concerns about the financial consequences and at least one expressed doubt about the viability of continuing its operations within the state. Each was clear that it wanted to provide a needed service to its market, if it could do so in a financially viable way, and each was clear that the losses would pose problems for the carriers.
- 16 The petitioners also asked for an exemption from WAC 480-122-020, which requires each competitive local exchange carrier to offer WTAP service when it serves 100 or more residential customers. Commission Staff recommended denial of the exemptions. Staff said the petitioners could arrange their service from the underlying companies (Qwest, Verizon, and Sprint) such that they did not incur excessive losses in serving WTAP customers. Staff also noted that a CLEC may choose the exchanges in which to offer service and that a company need not provide WTAP service in any exchange in which it offers no service at all.

- 17 The Commission also considered whether to adopt on an emergency basis, for immediate effect, a rule already adopted but scheduled to take effect on July 1, 2003. The rule, WAC 480-120-174, reduces financial responsibility evidence required for resumption of service. Staff and several consumer and low-income advocates suggested that if the rule were in effect immediately, WTAP participants with credit problems would find it easier to secure service from an ILEC if the CLEC were to leave the market.
- 18 The majority of WTAP customers reside in Qwest's service territory. The next largest number reside within Verizon's territory. Sprint serves territory in which a smaller number reside. Both Qwest and Verizon appeared at the initial and the recessed meetings, and pledged to work swiftly to process any WTAP customers terminated by their CLEC. Qwest offered to work with existing carriers to provide a "mass migration" – a transfer of CLEC-terminated customers from the CLEC to the ILEC without the customer's consent, upon waiver of the Commission's rule prohibiting "slamming," or the transfer of service without consent. Qwest's initial proposal was to wait until the deadline for transfer to see who the remaining customers were, then work over several weeks to effect the transfer. This drew concerns from Tel West, who noted that it would thus be required to absorb losses for an extended period of time. Verizon stated that it is unable to provide a mass migration, but that it will expedite the transition of any WTAP client who asks to switch to Verizon from a CLEC.
- 19 Consumer representatives, including Robert Cromwell for Public Counsel, Sandra Ripley from the Seattle Telecom Consortium, and Andrea Abrahamson, of the Washington Protection and Advocacy System, urged actions that would assist WTAP customers in retaining their service. They opposed the petitioners' request to terminate service on less than 30 days' notice.

IV. DISCUSSION AND DECISION

20 **A. Petition for exemption from WAC 480-120-081.** The Commission denies the petitions for exemption from WAC 480-120-081, which limits the reasons for which a telecommunications company may discontinue serving a customer. The requests appear not to fall within this rule, which speaks to individual decisions to terminate. Instead, the CLECs here seek to cease serving a class of customers.

21 **B. Petition for exemption from WAC 480-120-083.** The Commission also denies the petitions for exemption from WAC 480-120-083, which requires 30 days' notice of termination of service when a company ceases to do business in the state or to cease providing a service within the state. The petitioners proposed to serve notice of cessation of service to WTAP clients during mid-June and to effect the cessation on July 1, 2003.

22 The short time frame of an exempted notice would increase the disruption of transition and would concentrate transfers of customers between carriers. The Commission also believes that the companies themselves need time to work through the effect of the rule on their own operations and to consider their approaches. The Commission adopts an alternative.

23 Although we deny the exemption from the notice rule, we will permit the petitioners to transfer their customers to the underlying carriers (or another LEC) without obtaining approval of the customers. We suggest that companies desiring to drop customers provide an immediate notice that urges action by July 1 but also provides the required 30-day notice of termination. This will encourage customers to accomplish an early switch, and will reduce the companies' exposure to loss. The notice will become effective, and the companies may actually terminate service, on the 31st day following mailing of the notice.

24 Qwest has also agreed to provide “mass migration.” In order to facilitate the migration of CLECs’ WTAP customers within Qwest’s service territory who do not ask to be transferred, and to ensure that they do receive continuing service, Qwest has agreed to work with CLECs to anticipate the need for migration and to reduce the time for effecting migration. Verizon has also pledged cooperation, but reports that it is unable to achieve a mass migration.

25 **C. Petition for exemption from WAC 480-122-020.** The petitioners seek exemption from the provision in WAC 480-122-020 that requires companies serving more than 100 residential telephone customers within the state to offer WTAP participation. They argue that continuing to serve these customers when the WTAP customer rate and the reimbursement fail even to cover the petitioners' telephone bills from their underlying carriers creates an improper hardship on the companies and endanger the companies’ ability to provide service.

26 The Commission will not grant a permanent exemption as requested. However, the Commission recognizes that the WTAP program is in great flux at this moment, due to the sudden change in the structure of the reimbursement rules of DSHS. DSHS restructured the reimbursement levels in its May 30 emergency rule; the program no longer ensures full recovery of participating LECs' costs. DSHS may retain the new structure when it adopts a permanent rule, but the outcome is unknown at this point. In addition, DSHS has said that it will seek a substantial increase in the WTAP rate, to take effect on August 1, 2003. The suggestion that petitioners pursue alternate means of securing facilities does not appear to be a practical approach for the long run.

27 Because of the great uncertainty about the ultimate effect of these changes, the Commission concludes that it is reasonable for the petitioners to be excused from accepting new WTAP customers in the short term.

28 Until August 1, 2003, the petitioners that notify existing customers of the cessation of WTAP service may offer residential service without the requirement to serve WTAP -eligible customers at the discounted rate. The Commission anticipates that it will be able to review circumstances in effect on August 1, 2003 to respond knowledgeably to any request to extend the exemption.

29 We condition this exemption, however. The CLEC must inform all applicants for service that WTAP service is available from other LECs for \$4.00 per month to households that are eligible for the service.

30 In terminating WTAP customers the companies must cooperate with the ILEC serving the territory by providing information or otherwise facilitating the transition of customers from CLEC to ILEC service. In addition, each company using the exemption to refuse service to WTAP customers must continue serving the WTAP customers at least until the end of the 30 day notice period in WAC 480-120-083.

31 The Commission notes that the petitioners, in both their cessation of service to existing customers and their refusal of service to WTAP applicants, must treat all WTAP customers and applicants similarly. The companies are not free to choose individual customers to terminate or accept from among customers similarly situated, but must use criteria that are reasonable given the purpose for termination, such as all WTAP customers, all WTAP customers within a rate zone, or all WTAP customers within an exchange.

32 Finally, while we respond only to petitions from three CLECs, at least two additional CLECs provide service to WTAP clients. They are Z-Tel Communications, Inc. and Phone Solution, Inc. We intend the exemptions granted herein to be applicable to all similarly situated companies, including Z-Tel Communications, Inc., and Phone Solution, Inc.

33 **D. Petition for exemption from RCW 80.36.410 through -475.** The CLECs note the Commission's power under RCW 80.36.320 to waive the application of any statute in Title 80 for competitive telecommunications carriers. The carriers ask exemption from statutes imposing WTAP responsibilities on the Commission and telecommunications companies.

34 The Commission denies the petitions for waiver of these statutes. The waiver is unnecessary when the ends of the companies, the customers, and the public can be met through other means.

35 **E. Exemption on the Commission's own motion from WAC 480-120-139.** The Commission on its own motion finds it necessary to provide a limited exemption from the provisions of WAC 480-120-139 to those carriers participating in this transition of WTAP customers from the petitioners occasioned by the DSHS emergency rule.

36 To the extent it is necessary to transfer customers without their consent in order to ensure the continuation of WTAP service, the Commission grants exemption from the "anti-slamming" rule to the ILECs and the CLECs who participate in the transfer. The purpose of the rule is to preserve choice, to prevent unwanted transfers to service, and to prevent unwanted charges.

37 Here, the customers have qualified for and have sought out service through the WTAP program. Given the alternatives of losing service entirely or retaining it in an "invisible" transfer that will impose no additional charges, it is clear that the customers and the public interest are best served by allowing exemption from the rule and allowing the carriers to effect the transfer. The petitioners must notify customers of the transfer but need not secure the customer's approval.

38 **F. Emergency rulemaking.** The Commission declines to adopt an emergency rule
to advance the effect of WAC 480-120-174 from July 1, 2003. There is some
concern about whether it would apply at all, inasmuch as by its terms it applies
only to “restoring” service for customers who have been terminated by their
serving telecommunications company for credit reasons. In addition, Qwest
Communications and Verizon both committed that they would use credit
standards no more restrictive than the standards in the rule in order to help
assure continuation of service for any WTAP customers whose provider
terminated its service.

V. FINDINGS AND CONCLUSIONS

39 From the foregoing, the Commission makes the following summary findings and
conclusions:

- 40 (1) The Commission has jurisdiction over the subject matter of this
proceeding, the petitioning competitive local exchange companies and
other CLECs similarly situated, and the incumbent local exchange
companies that provide telephone service in territories served by the
CLECs.
- 41 (2) Petitioners are telecommunications companies authorized to conduct
business in the state of Washington.
- 42 (3) The Commission may grant exemptions from rules when it is in the public
interest, consistent with the purpose of regulation, and consistent with
state statutes. *WAC 480-120-015.*
- 43 (4) The limited exemptions from WAC 480-122-020 and from WAC 480-120-
039 are consistent with public interest, the purpose of the regulation, and

state statutes because the exemptions will allow WTAP customers to transfer to another carrier with a minimum of difficulty and expense.

VI. ORDER

44 THE COMMISSION ORDERS That exemption from WAC 480-122-020 is granted through and including August 1, 2003, to competitive local exchange carriers to allow the discontinuance of service to WTAP customers, as conditioned in the body of this Order; and

45 THE COMMISSION FURTHER ORDERS That carriers participating in the transfer of WTAP customers pursuant to the exemption granted above are exempt from the application of WAC 480-120-139 when they effect the transfer of WTAP customers from a CLEC to the ILEC serving the territory in which the customer resides.

DATED at Olympia, Washington and effective this 17th day of June, 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner