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March 5, 2001

**VIA ELECTRONIC MAIL
ORIGINAL VIA FEDEX**

Carole J. Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia WA 98504-7250

Re: Tariff Rulemaking, Docket No. U-991301

Dear Ms. Washburn:

Pursuant to the Notice of Opportunity to File Written Comments (March 2, 2000) on proposed rules relating to price lists in the above-referenced docket, Advanced TelCom Group, Inc., AT&T Communications of the Pacific Northwest, Inc., Electric Lightwave, Inc., Focal Communications Corporation of Washington, Global Crossing Telemanagement & Local Services, Inc., Pac-West Telecomm, Inc, and XO Washington, Inc., (collectively "Joint CLECs"), provide the following comments. The Joint CLECs appreciate the Commission's efforts to revise and improve its rules with respect to price lists and contract filings, but they have serious concerns with respect to several of the proposed requirements. Generally, the intent of the revisions appears to be to undermine the value of price list filings while at the same time continuing to require such filings and imposing onerous notice conditions. Specific concerns are discussed below in the context of each proposed new rule.

(1) Definition, interpretation, and application of price lists.

Subsection (b) provides that "[a] price list is not a tariff and is not reviewed or approved by the commission at the time of filing." The second part of this sentence does not reflect current Commission practice. The Commission requires that a price list be provided as part of an application for registration and petition for competitive classification, which the Commission approves as part of that filing. In addition, these price lists are thoroughly reviewed by Commission staff and must comply with the form provided by the Commission or be subject to

extensive discussions between the company and Commission staff. While the scrutiny is less demanding once the initial price list has been filed, Commission staff reviews these subsequent price list filings and contacts the company if it has any concerns.

The legislature has required that price lists be filed with the Commission to protect both consumers and the carriers that serve them. *See* RCW 80.36.320 & 330. The filed-rate doctrine, which requires regulated carriers to charge only those rates and impose those terms and conditions included in their tariffs or price lists, embodies the legislative policy of preventing undue preference and discrimination. *See* RCW 80.36.170 & 180; *see generally* *AT&T v. Central Office Tel., Inc.*, 524 U.S. 214, 118 S. Ct. 1956, 141 L. Ed. 2d 222 (1998) (confirming the applicability of the filed rate doctrine under federal law). The market provides such discipline on competitively classified companies, but the Commission has never waived these statutory restrictions for any carrier. In addition, while some carriers would prefer not to file price lists, others find them useful as a means of having a standard product offering to consumers. As long as the legislature continues to require price list filings, the Commission should not undermine their utility. Accordingly, the Joint CLECs recommend that the first sentence in this subsection be revised to delete everything after the word “tariff.”

Subsection (c) provides, “The commission will not deem a customer to have constructive knowledge of any provision of a price list solely because that provision has been filed with the commission.” Such a requirement represents a major change to customer notice requirements, rendering Commission filings a meaningless exercise and making the regulations applicable to price lists more, rather than less, onerous than a tariff filing in this respect. Companies would be required not only to file each price list revision with the Commission but effectively to serve each such filing on each and every customer or risk a Commission finding that a particular customer lacked sufficient notice. The Commission is an administrative agency, not a court, and part of its function is to provide public notice of company filings and to maintain those filings as public records, including tariffs and price lists. This proposed subsection is inconsistent with that function and imposes an undue burden on companies offering service under a price list, particularly when making only minor changes to the existing price list. The Joint CLECs, therefore, recommend that this subsection be deleted in its entirety.

(2) Form and content of price lists.

Subsection (c) provides that a price list filing “becomes effective on the later of (a) ten days after it is filed with the commission and, for price list revisions only, (b) ten days after any existing customers receive actual notice of the revision.” Again, this places an onerous and unwarranted burden on the company to serve each and every customer with a price list revision, even if that revision has no substantive customer impact. The burden is compounded in light of the failure of these rules to “prescribe the form of notice” as required by statute, RCW 80.36.320(2) & 330(2), leaving companies to guess what notice the Commission will find sufficient to enable the price list revision to take effect. The Joint CLECs, therefore, recommend that this subsection be revised to make price list revisions effective ten days after filing with the

Commission, which should also provide customers and potential customers with sufficient notice of the filing.

Subsection (d) permits competitively classified companies to state prices in their price lists as maximum amounts, rather than specific prices. This is an appropriate rule and, as provided in subsection (e), it should not be extended to companies that have not been classified as competitive. The Joint CLECs, therefore, support subsections (d) and (e) of this rule.

(3) Publication and disclosure of price lists to customers.

This proposed rule requires a company to maintain a current price list on a publicly accessible web site. Such a requirement may be appropriate as an alternative to maintaining a price list at the Commission (assuming legislative authority to make price list filings optional) as the FCC has determined for interstate toll. The Commission, however, should not require a company – particularly a small new entrant – to create and maintain a web site if it does not already do so. Accordingly, Joint CLECs recommend that the Commission amend this proposed rule to permit companies to make a current price list available for public inspection either at their offices in Washington or on a publicly accessible web site.

(4) Filing of contracts for service.

The Joint CLECs believe that the requirement to file contracts should be waived for all companies classified as competitive. One or more of the Joint CLECs have filed, or will file, for a waiver and will address those issues in other proceedings, rather than as part of this rulemaking. The Joint CLECs nevertheless appreciate the Commission's efforts to make such contract filings less burdensome by narrowing the circumstances in which such contracts must be filed and allowing additional time in which to make any required filing.

The Joint CLECs' other concern with respect to this proposed rule is that the Commission does not expressly reserve the right to reject a contract filing for services classified as competitive under RCW 80.36.330 when the prices charged fail to satisfy an imputation standard. The Commission has repeatedly required that incumbent local exchange companies satisfy such a standard in addition to a demonstration that the service is priced above cost, and they should not be permitted to circumvent that requirement through contract filings. The Joint CLECs continue to urge the Commission to establish a rule that codifies imputation, but for purposes of this rule, the Joint CLECs recommend that the Commission add "including, but not limited to, failure to satisfy imputation requirements" at the end of the first sentence in subsection (d)(iii).

Carole Washburn
March 5, 2001
Page 4

The Joint CLECs appreciate the opportunity to comment on the Proposed Rule. Please contact me if you have any questions about these comments or need additional information.

Very truly yours,

Davis Wright Tremaine LLP

Gregory J. Kopta

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