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2                   **WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

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4    IN THE MATTER OF THE RULEMAKING  
5    PROCEEDING RELATING TO   **PRICE**  
6    **LISTS**

**DOCKET NO. UT-991301**

**COMMENTS OF TRACER**

7    COMMISSION GENERAL – TARIFFS:  
8    WAC 480-80-035

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10           In response to the Commission’s February 9, 2001 Notice the Washington  
11    Telecommunications Ratepayers Association for Cost-based and Equitable Rates (“TRACER”)  
12    files the following comments regarding the proposed re-draft of the Commission’s price list  
13    rule.

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15                                   **I. GENERAL COMMENTS**

16           TRACER applauds the Commission’s efforts to revise the price list to improve the  
17    utility of price lists to consumers and to resolve areas of confusion and dispute between  
18    consumers and carriers that exist under the existing rule. TRACER particularly supports  
19    provisions of the proposed rule that would (1) make price lists more readily available to  
20    consumers by requiring that they be posted on a web site accessible to the public using  
21    standard web browser software (Subsection 3), and (2) remove the ability of carriers to mislead  
22    consumers, either intentionally or unintentionally, by quoting to consumers prices below those  
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2 stated in the price lists on file, then relying on the filed rate doctrine to enforce the higher  
3 prices on the consumers (Subsection 1).  
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5 TRACER believes that, if competition is to work in the public interest, consumers must  
6 be able to compare options available in the marketplace in a meaningful manner, be easily and  
7 correctly informed about the prices, terms, and conditions that govern their relationship with  
8 their carriers, and enforce the deals that they strike. For the most part, the proposed rule would  
9 be consistent with that objective. However, TRACER does believe it would be desirable to  
10 make a few changes that would improve the rule.  
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## 12 **II. SPECIFIC ISSUES**

### 13 **SECTION 1 – DEFINITION, INTERPRETATION, AND APPLICATION OF PRICE LISTS.**

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15 TRACER agrees with the language in Subsection 1(a) that states that a price list is a  
16 telecommunications company's standard offer to the general public of intrastate  
17 telecommunications services that have been classified as competitive. TRACER also agrees  
18 with the language of Subsection 1(e) that when a company makes an offer of service at prices,  
19 terms, or conditions that vary from those in its price list, the offer shall be treated as a contract  
20 which, once it takes effect, is enforceable by the parties according to its terms, even if the  
21 company fails to file the contract as required by the Commission's rules and by RCW  
22 80.36.150. By treating any agreement to provide service that varies from the terms of the  
23 company's price list as a contract, the Commission can avoid the inappropriate application of  
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2 the filed rate doctrine as a deceptive practice to mislead consumers about the real terms of their  
3 deals with their carriers.  
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5 SECTION 2 – FORM AND CONTENT OF PRICE LISTS

6 TRACER disagrees with Subsection 2(d)(iii), which states that any price list may state the  
7 rates, charges, or prices as maximum amounts rather than specific prices. The point of having  
8 a price list is to inform consumers what the prices are that are actually being offered in the  
9 marketplace so they can make informed decisions about which carrier to choose. If the filed  
10 price is only a maximum, consumers would not know what price is actually being offered.  
11 Further, in the absence of other written evidence, the Commission would have no basis for  
12 determining what the controlling price was in the event of a dispute. And, unless and until the  
13 statutory prohibitions against undue discrimination or preference were waived for all  
14 competitive companies and services, there would be no basis for consumers or the Commission  
15 to determine whether those statutory prohibitions were being violated. TRACER also believes  
16 Subsection 2(d)(iii) is inconsistent with Subsection 2(e)(ii), which states that any price list  
17 must state the specific rates, charges, or prices at which the service is offered. Stating only a  
18 maximum price would not satisfy such a requirement. Accordingly, TRACER recommends  
19 that Subsections 2(d)(ii) and (iii) be stricken.  
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2 As stated previously, the better approach is to require that any variation from a carrier's  
3 standard offer be treated as a contract. As indicated in RCW 80.36.150, a contract, by its very  
4 nature, is an agreement to provide service for a stated term that deviates from the terms of a  
5 tariff or price list or is for a new service with limited demand. Under the terms of that statute,  
6 contracts are enforceable according to their terms, unless rejected by the Commission before  
7 their stated effective dates. Also, contracts for competitive services are not subject to the  
8 statutory prohibitions against undue discrimination and preference. Thus, the interests of both  
9 consumers and carriers would be served by treating agreements that vary from the terms of a  
10 standard offer as contracts.  
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13 SECTION 4 – FILING OF CONTRACTS FOR SERVICE.  
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15 Finally, TRACER believes that Subsection 4(c) is inconsistent with the requirements of  
16 RCW 80.36.150(3) and should be changed. That statute provides in pertinent part: "Contracts  
17 shall be enforceable by the contracting parties according to their terms, unless the contract has  
18 been rejected by the commission before its stated effective date as improper under the  
19 commission's rules and orders, or the requirements of this chapter." If contracts are not filed  
20 until 15 days after their effective date, as provided in Subsection 4(c), it would be impossible  
21 for the Commission to be in a position to effectively reject any improper contract. To be  
22 consistent with the statute, the rule should provide that a contract must be filed before the  
23 stated effective date.  
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2 **III. CONCLUSION**  
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4 In sum, with the changes noted above, TRACER supports the proposed re-draft of the  
5 Commission's price list rule and believes it represents a substantial improvement of the rule  
6 that is now in effect. TRACER looks forward to working with the Commission Staff and  
7 interested parties at the March 6th workshop to improve the proposed rule.

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9 RESPECTFULLY SUBMITTED THIS 2<sup>ND</sup> DAY OF MARCH 2001.

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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that on the date given below, COMMENTS OF TRACER, in WUTC  
5 Docket No. UT-991301, was served via electronic mail, and the original hard copy served via  
6 FedEx Priority Overnight, to the following:

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12 DATED at Seattle, Washington this 2<sup>nd</sup> day of March 2001.

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GRETCHEN ELIZABETH EOFF  
PARALEGAL