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David L. Rice
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November 18, 2004

VIA LEGAL MESSENGER

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
Olympia, Washington 98504-7250

Subject: In the Matter of VCI Company Petition for Waiver of WAC 480-120-162

Dear Ms. Washburn:

Attached are an original and 12 copies each of the Petition for Waiver and Declaration of Stan Efferding on behalf of VCI Company.

Very truly yours,



David L. Rice

cc w/enc: Ms. Carlene Hughes
Mr. Stan Efferding

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of:

VCI COMPANY

Petition for Waiver of WAC 480-120-162

Docket No. **UT-042015**

PETITION FOR WAIVER

I. PETITIONING PARTY

1. VCI Company ("VCI") is the petitioning party. Please direct all questions and correspondence regarding this Petition to VCI's attorneys:

Brooks E. Harlow
David Rice
Miller Nash LLP
4400 Two Union Square
601 Union Street
Seattle, Washington 98101
Phone: (206) 622-8484
Fax: (206) 662-7485

With a copy to:

Stan Efferding
VCI Company
3875 Steilacoom Blvd., S.W.
Suite A
Lakewood, Washington 98499
Phone: (206) 830-0051
Fax: (206) 475-4328

II. RULES AND STATUTES AT ISSUE

2. This Petition concerns WAC 480-120-162, which is the "cash and urgent payments" rule ("Rule"), and WAC 480-120-015, which states that the Commission may waive its rules.

PETITION FOR WAIVER - 1

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III. SUMMARY OF REQUEST

3. In this Petition, VCI moves the Commission to waive the portion of the Rule that limits payment agencies from charging VCI's customers more than \$1.00 for processing their bills. WAC 480-120-162. Applying the Rule to VCI actually undermines the Rule's purposes and is contrary to the public interest because VCI is aware of no payment agencies that will process transactions for only \$1.00. So VCI will probably have to stop allowing its customers to pay their bills at payment agencies. The Rule also creates a hardship for VCI, because a disproportionate number of its customers use payment agencies compared with other carriers. By waving the Rule, the Commission will ensure that VCI's customers have as many payment locations as possible at a reasonable price. Alternatively, the Commission can impose a \$7.00 cap that would allow VCI customers to use payment agencies but also prevent unreasonable transaction fees.

IV. BACKGROUND

4. VCI is a telecommunications company registered to provide local service in Washington and regulated as a competitive carrier. Order, Docket UT-021524 (Dec. 12, 2002). VCI serves primarily low-income consumers who generally have no bank accounts and thus need cash payment locations to conduct their financial transactions, such as paying their telephone bills.¹ So, VCI allows its customers to make payments at "Moneygram" payment locations. There are approximately 200 of these locations in Washington, to the best of VCI's knowledge. Moneygram payment locations are located in all Wal-Mart, Albertsons, Long's Drugs, and U.S. Bank locations, as well as in many other convenient neighborhood locations. Moneygram charges the VCI customer \$5.00 at Wal-Mart and \$5.95 at the other locations to process the payment to VCI. VCI does not make any commissions, revenue or profit of any kind on the transaction fee that Moneygram charges. Instead, the customer pays the entire cost of the

¹ Stan Efferding, the Secretary/Treasurer of VCI, submits the attached declaration verifying the accuracy of the facts in this Petition.

transaction directly to Moneygram. VCI also allows customers to pay bills by mail, by credit card over the phone and at VCI's main payment location at 1731 S. Boone Street, Aberdeen, Washington, 98520.

5. Carlene Hughes informed VCI by email on November 10, 2004, that VCI's use of Moneygram as a payment agent violates the Commission's "cash and urgent payments" rule because Moneygram charges more than \$1.00 to process transactions. See WAC 480-120-162. The section of the Rule at issue is the requirement that LECs "may permit those additional [payment] agents to charge customers not more than \$1.00 for processing a transaction." WAC 480-120-162(2). As noted above, Moneygram charges customers more than \$1.00, so the cap effectively prevents VCI from using Moneygram or any similar payment agency. For these reasons, VCI now petitions the Commission to waive the above-quoted requirement of the Rule.

V. GRANTING A PARTIAL WAIVER OF THE PAYMENT AGENCY RULE IS IN THE PUBLIC INTEREST, PROMOTES THE PURPOSES OF THE RULE AND ELIMINATES A HARDSHIP ON VCI AND ITS CUSTOMERS

6. The Commission has the power to grant a waiver of any of its telecommunications rules where waiver is consistent with the rules' purpose and in the public interest:

The Commission may grant an exemption from the provisions of any rule in this chapter, if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

WAC 480-120-015(1). The Commission will take into account whether the rule creates a hardship for the party requesting the waiver:

In determining whether to grant the [waiver] request, the commission may consider whether application of the rule would impose undue hardship on the requesting person, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.

WAC 480-120-015(4). VCI's request meets these requirements, as explained below.

A. A Waiver Serves The Purposes Of The Rule And Is In The Public Interest

7. The Rule on payment agencies has two primary purposes. First, the Commission intended to assist the "segment of the population that cannot afford the services of a bank or chooses to pay in cash for some other reason" by maximizing the number of payment locations. Order Amending, Adopting and Repealing Rules Permanently, 2002 Wash. UTC LEXUS 514 at *41. Second, the Commission intended to minimize transactional costs on customers by placing a limit on transaction fees charged by payment agencies.

8. VCI's use of Moneygram is consistent with these purposes. Through Moneygram, VCI has maximized the number of payment locations that its customers can use. Moneygram has about 200 locations in Washington, which means that VCI customers across Washington are likely to have an urgent payment location located conveniently near their home or work. VCI has also minimized transactional costs on customers. VCI chose Moneygram in part because its transaction fees are comparatively low. By comparison, Western Union charges from \$6.95 to \$12.95 per transaction. VCI also assesses no additional charge beyond what Moneygram charges for using the payment agencies.

9. The problem created by the Rule is that no payment agent that VCI is aware of, including Moneygram, will handle payments for only \$1.00 or anything close to that. So, VCI will likely have to stop using Moneygram, if the Commission requires VCI to comply with the Rule. This would harm VCI's customers, who are the intended beneficiaries of the Rule's requirements. It would mean that VCI would only have one payment location, located in Aberdeen. There would be no nearby urgent payment locations for VCI's customers outside the Puget Sound area. Many of these customers will have no practical way to pay their telephone bills because they have no bank accounts and can only pay cash at a payment center. In some cases, VCI could no longer serve these customers.

10. Customers that cannot use VCI will have few if any telecommunications options. That is because VCI's customers typically cannot use a different carrier. They cannot obtain service from Qwest as a result of prior unpaid bills or poor credit. Few if any other

carriers exist who could serve these customers due to the decrease in local competition as a result of recent regulatory changes, as shown by the exit of AT&T and MCI from the residential local telephone market. VCI is the last affordable carrier for these customers.

11. The only other option is for VCI to pass the Moneygram transactional costs on to all VCI customers, but that is impractical. The cost would be significant because so many of VCI's customers use payment agencies. About 2,500 of VCI's customers use the Moneygram payment locations each month, meaning that an additional cost of \$14,000 would have to be borne by VCI's entire customer base of 15,000 customers. That would unfairly place the cost burden on those customers that do not use the payment locations.

12. In the end, applying the Rule's \$1.00 cap will actually harm the people that the Rule seeks to serve. Moneygram's transactional fee is a small downside compared to the enormous upside of insuring widely-available merchant payment locations. The Commission should prioritize the availability of payment locations over capping fees at \$1.00, or customers will lose out. Waiver is thus consistent with the public interest and the purposes of the Rule.

B. The Rule Creates A Disproportionate Hardship On VCI

13. VCI's customers use payment agencies to pay their monthly bills more than customers of other LECs, to the best of VCI's knowledge. Also, VCI sends disconnection notices to approximately 50% of its customers each month, which VCI believes is much higher than the large LECs that serve Washington. Customers with disconnection notices need a way to pay their bill quickly, and so they are more likely to rely on a payment agency near their home or office. The Rule thus harms VCI more than other carriers.

14. In addition, VCI is less likely than other carriers to be able to absorb the payment agency costs. VCI is a small company compared with Qwest and other ILECs. The payment agency Rule already recognizes that a small carrier cannot afford to have as many payment locations as a large carrier, shown by the fact that the Rule limits the number of required payment locations based on the company's size. WAC 480-120-162(1). Unfortunately

the Rule's requirements for optional payment agencies do not similarly account for the needs of small companies.

15. A complete waiver of the cap is the most reasonable approach.

Alternatively, if the Commission is willing to waive the \$1.00 cap but still wants to retain a cap at some level, VCI suggests that the Commission apply a \$7.00 cap on transaction fees. \$7.00 is reasonable because it prevents price gouging but also accounts for the fact that Moneygram may eventually raise its fees slightly.

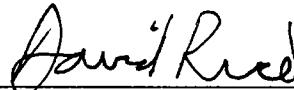
VI. RELIEF REQUESTED AND CONCLUSION

16. VCI's request meets the Commission's standard for a waiver.

Accordingly, VCI requests the Commission to grant a waiver of the requirement that VCI "may permit those additional [payment] agents to charge customers not more than \$1.00 for processing a transaction." WAC 480-120-162(2). Alternatively, the Commission should impose a \$7.00 cap.

DATED this 18th day of November, 2004.

MILLER NASH LLP



David L. Rice
WSB No. 29180

Attorneys for VCI Company

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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of:

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Petition for Waiver of WAC 480-120-162

Docket No. _____

DECLARATION OF STAN EFFERDING

1 I, Stan Efferding, declare under penalty of perjury under the laws of the state of
Washington that the following is true and correct:

2 I am over 21 years of age, and I make this declaration on the basis of my personal
knowledge. If called upon to testify in this matter I could and would competently do so.

3 I am Secretary/Treasurer of VCI Company. I reviewed the Petition for Waiver of
WAC 480-120-162 prepared on behalf of VCI Company ("Petition"). The facts stated in the
Petition are true to the best of my knowledge.

DATED this 18TH day of November, 2004



Stan Efferding

PIERCE COUNTY / LAKEWOOD, WA.
Location where signed