

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of the Application for
Registration as a Telecommunications
Company and Classification as a
Competitive Telecommunications Company
of:

Maxxis Communications, Inc.

DOCKET NO. UT-990583

ORDER RESCINDING REQUIREMENT
TO PROVIDE BOND SUFFICIENT TO
PROTECT CUSTOMER PREPAYMENTS
OR DEPOSIT CUSTOMER
PREPAYMENTS IN ESCROW OR
TRUST ACCOUNT AND RESCINDING
REPORTING REQUIREMENTS

BACKGROUND

- 1 On May 12, 1999, the Washington Utilities and Transportation Commission granted in its Order the petition for registration of Maxxis Communications, Inc. (Maxxis). Maxxis was required to post a performance bond sufficient to cover any customer prepayments or hold customer prepayments in escrow or trust. The bonding requirement was imposed pursuant to *former* WAC 480-120-058.
- 2 Effective June 17, 2002, the Commission repealed WAC 480-120-058, and enacted WAC 480-120-127, which removes the mandatory customer prepayment protections. Given the change in the Commission's regulations, the Commission finds that it is consistent with the public interest to rescind the requirement to provide a bond sufficient to cover customer prepayments or hold such prepayments in escrow or trust. The Commission retains the jurisdiction to require Maxxis to protect customer prepayments if the Commission finds such requirement to be in the public interest.

DISCUSSION

- 3 Maxxis petitioned for registration as a telecommunications company in the state of Washington pursuant to RCW 80.36.350. Maxxis proposed to offer prepaid telecommunications services pursuant to *former* WAC 480-120-052.
- 4 Under *former* WAC 480-120-058, all telecommunications companies collecting customer prepayments were required to show that they met one of the following criteria:
- (a) The company has a corporate debt rating, according to Standard and Poor's of BBB or higher, or according to Moody's of BAA or higher, with respect to outstanding debt obligation; or
 - (b) The company has a performance bond satisfactory to the commission sufficient to cover any customer prepayments; or

- (c) The company has made provision for deposit of customer prepayments in a federally insured interest bearing trust account maintained by applicant solely for customer advances. . .

5 In addition, *former* WAC 480-120-058 required telecommunications companies collecting customer prepayments to file a report with the Commission within 15 days of the end of each calendar quarter detailing, with respect to Washington operations (1) the total outstanding balance of customer prepayments; (2) the dollar amount of prepayments sold during the reporting period; (3) the depleted usage of prepaid services during the reporting period; and (4) the total outstanding prepaid balances at the end of the reporting period.

6 On May 14, 2002, in Docket No. UT-991922, the Commission entered an order amending, repealing, and adopting rules permanently. In that order, the Commission repealed WAC 480-120-058.

7 Also, on May 14, 2002, in Docket No. UT-991922, the Commission adopted WAC 480-120-127, which provides that the Commission, as a precondition to registration, may require a telecommunications company to file a performance bond sufficient to cover any prepayments the company collects from its customers or order that such prepayments be held in escrow or trust, as stated in RCW 80.36.350.

8 Because WAC 480-120-058 is repealed, there is no longer a rule that mandates such protection of customer prepayments. Blanket performance bond and trust agreement requirements have afforded minimal consumer protection. The blanket requirements and the Commission's corresponding review for compliance have been costly and burdensome for the registered companies and the Commission. It is consistent with the public interest to remove the requirement that Maxxis provide a performance bond sufficient to cover customer prepayments or deposit such prepayments in escrow or trust. For the same reasons, it is consistent with the public interest to remove the reporting requirements of Maxxis regarding customer prepayments.

9 The Commission retains jurisdiction under RCW 80.01.040 to require Maxxis to provide a performance bond sufficient to cover any customer prepayments or to deposit such prepayments in escrow or trust if the Commission determines that such requirement would be in the public interest.

10 This matter was brought before the Commission at its regularly scheduled open meeting on October 30, 2002. The Commissioners, having determined this action to be consistent with the public interest, directed the Secretary to enter this order.

FINDINGS OF FACT

11 Having considered the prior orders relating to Maxxis and based on the foregoing discussion, the Commission now makes the following summary findings of fact. Those

portions of the above discussion that include findings pertaining to the ultimate decisions of the Commission are incorporated by reference.

- 12 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington vested by statute with the authority to regulate telecommunications companies.
- 13 (2) Maxxis is registered to provide telecommunications services for hire to the public in the state of Washington.
- 14 (3) Rescinding the requirement Maxxis provide a performance bond sufficient to cover any customer prepayments collected from customers or deposit such prepayments in escrow or trust is consistent with the public interest.
- 15 (4) Rescinding the customer prepayment reporting requirements imposed on Maxxis is consistent with the public interest.
- 16 (5) By removing the requirements regarding protection of customer prepayments required by *former* WAC 480-120-058, the Commission in no way endorses the financial viability of Maxxis nor the investment quality of any securities it may issue.

CONCLUSIONS OF LAW

17 Having discussed above in detail all matters material to our decision, and having stated general findings and conclusions, the Commission now makes the following summary conclusions of law. Those portions of the preceding detailed discussion that state conclusions pertaining to the ultimate decisions of the Commission are incorporated by this reference.

- 18 (1) The Washington Utilities and Transportation Commission has jurisdiction over Maxxis and the subject matter of this proceeding under RCW 80.01, RCW 80.04, RCW 80.36, WAC 480-120, and WAC 480-121.
- 19 (2) Pursuant to RCW 80.04.210, the Commission's prior orders regarding Maxxis should be changed to rescind the requirement that Maxxis either provide a performance bond sufficient to cover any customer prepayments and advance payments or deposit such prepayments and advance payments in escrow or trust.
- 20 (3) Pursuant to RCW 80.04.210, the Commission's prior orders regarding Maxxis should be changed to rescind the reporting requirements regarding customer prepayments.
- 21 (4) The Commission retains jurisdiction under RCW 80.01.040 to require Maxxis to provide a performance bond sufficient to cover any customer prepayments or require Maxxis to deposit such prepayments in escrow or trust if the Commission determines that such requirement would be in the public interest.

ORDER

THE COMMISSION ORDERS:

- 22 (1) The Commission's prior order regarding Maxxis Communications, Inc. is
changed to rescind the requirement that Maxxis provide a bond sufficient to cover
any customer prepayments or deposit such prepayments in escrow or trust.
- 23 (2) The Commission's prior order regarding Maxxis Communications, Inc. is
changed to rescind the reporting requirements regarding customer prepayments.

DATED at Olympia, Washington, and effective this 30th day of October, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

CAROLE J. WASHBURN, Secretary