February 20, 2004

VIA ELECTRONIC MAIL

Carole Washburn, Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: WA UT 040015
MCI's Comments on Possible Telecom-related Rule Changes

Dear Ms. Washburn:

WorldCom, Inc., on behalf of its regulated subsidiaries in Washington (n/k/a/ MCI), hereby provides the following comments in response to the Commission's January 28, 2004 Notice of Opportunity to File Written Comments in this docket.

These comments will follow the order of and will generally address the comments of the proposed rule changes as presented by the Commission Staff in its January 14, 2004 Memo regarding the proposed rule changes.

1. Telephone customer privacy rules (WAC 480-120-201 through –216)

The Commission Staff notes that the Commission was permanently enjoined from enforcing its telephone customer privacy rules on August 27, 2003 and listed those rules affected by the injunction. MCI encourages the Commission simply to adopt the rules established by the Federal Communications Commission ("FCC") on customer privacy and not to create its own independent set of privacy rules that may differ from the FCC rules. The FCC rules were created as a result of extensive debate amongst the industry and consumer groups. The product is a set of rules that balances the rights and protections of all involved, including telecommunications consumers. No separate Washington specific rules are necessary to protect consumer privacy. Thus, creating and enforcing additional or difference privacy rules that apply to telecommunications companies that operate here in Washington would needlessly increase the regulatory burden on companies that do business here.

2. Record of third-party verifications in anti-slamming rule (WAC 480-120-147)

As part of the anti-slamming rule, companies are required to retain records when a third-party verification (TPV) firm is used to confirm a customer's change in service authorized orally during a telephone conversation. The current rule does not require that

companies ask the customer to state orally the date of the third-party verification. The Commission Staff argues for a rule change on the basis that this information would assist in resolving disputes about whether a customer actually authorized a change in service.

MCI requests that the Commission maintain the language in the current rule on this issue and not to make the change recommended by Staff. The date of the oral authorization is contained on WAV files maintained by MCI concerning third party verifications. This information can be provided to the Commission and is sufficient to resolve disputes as to the date of the authorization. It is not necessary to require the customer to state the date of the transaction during the TPV process. This additional step would unnecessarily waste consumer time. In addition, the current rule is consistent with the FCC slamming guidelines.

Staff did not note in its Memo the extent of the perceived problem or the number of disputes between the companies and consumers that it has confronted which center around the accuracy of the *date* of the oral authorization. Perhaps the parties could discuss the extent of this problem and possible ways to resolve the problem that do not require unnecessary modifications to the current TPV process.

3. Update anti-slamming rule to be consistent with federal rule (WAC 480-120-147)

Staff notes that the anti-slamming rule, WAC 480-120-147, has not been updated to reflect recent changes in the federal rule.

Consumer Affairs' Slamming Complaint Procedure incorporates the federal rules, as set out below:

Section 7, a, 5 (first bullet) in the Slamming Complaint Procedure reads:

The carrier has a valid verification, but did not change the consumer's service within 60 days of the date of the verification (FCC 3rd Report & Order in Docket 94-129, paragraph 34, released 8/15/00; and FCC Rule 64.1130(e)(5)(j)).

FCC 3rd Report & Order in Docket 94-129, paragraph 34 reads:

> We will not adopt a 30-day limit on the effectiveness of an LOA as suggested by petitioner SCB. We believe a more reasonable limitation on the amount of time an LOA should be considered valid is 60 days, and we hereby adopt this 60-day limit. We further conclude that the 60-day limits shall apply to submitting carriers rather than executing carriers, because submitting carriers are actually parties to the contractual agreement with the customer and, as such, are more capable of conforming their behavior to the obligation.

FCC Rule 64.1130(e)(5)(j), Letter of Agency Form and Content reads:

> A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency.

Section 7, a, 5 (fourth bullet) in the Slamming Complaint Procedure reads:
The telemarketer did not drop off the call as soon as the connection between the 3rd party verifier and the consumer was made (a violation of FCC rule 64.1120(c)(2)(ii)).

FCC rule 64.1120(c)(2)(ii) reads:

> A carrier or a carrier's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection has been established.

MCI agrees with Staff that the Washington rule should be updated to reflect the FCC rule on this issue.

4. Refund of deposits to business customers (WAC 480-120-128)

In the rule on deposits, the subsection on refunding deposits has a title that refers to residential customers only. Staff notes that this is confusing, because the text of the rule does not limit the provision to residential service.

MCI does not oppose a clarification on this issue.

5. Application of the out-of-service credit provision (WAC 480-120-164)

WAC 480-120-164 requires pro rata credits when service is not available for more than 24 hours in a billing cycle. The rule does not limit the credit to customer-reported outages, and there have been questions about whether companies are required to detect out-of-service conditions. Staff has provided informal advice that the rule does not require companies to implement systems to detect all outages but must provide the credit when it detects an outage in its normal course of business.

MCI believes the rule should remain as it is currently written or clarified to reflect that companies do not have to implement special systems to proactively manage incumbent local exchange carrier (ILEC) outages. MCI currently provides local residential services to consumers in Washington by purchasing the unbundled network element platform (UNE-P) from the incumbents. Thus, MCI currently relies on the ILEC to contact us when the ILEC experiences an outage. It would be exceedingly difficult to devise and implement a system whereby MCI would independently detect ILEC outages. Currently MCI issues credits in response to ILEC notifications and consumer calls regarding outages. MCI believes that the rule as it exists and is interpreted today properly balances consumer protection interests against the imposition of undue burden on the telecommunications industry.

6. Application of rule on restoring service after discontinuation (WAC 480-120-173)

WAC 480-120-173 establishes conditions under which a company must restore service when a customer has been disconnected. It is not clear from WAC 480-120-173 how long after disconnection a customer can be "restored," as opposed to having to apply for service as a new customer. The rule could be clarified to specify the time period, after disconnection, where a customer could have service restored.

MCI asks the Commission to exempt non facilities based providers from any requirement that may be adopted setting a time period by which a customer must be restored after disconnection. A non facilities based carrier, like MCI, which provides residential local service exclusively through UNE-P in Washington, loses connectivity to a customer once the customer is disconnected and is subject to ILEC installation timeframes to reconnect the customer. UNE-P providers also cannot guarantee that the consumer will be able to obtain the same phone number upon reconnection. Because the timeframe by which MCI and other non facilities based providers is out of the providers' control, a rule should not be imposed upon such carriers that would subject them to fines and/or penalties for failure to comply.

7. Application of WTAP "fresh start" rule to former customers (WAC 480-120-174)

WAC 480-120-174 requires companies to restore service to customers who were disconnected for nonpayment and subsequently enroll in the telephone assistance program for low-income customers. There are differences of interpretation about whether this opportunity is available only immediately after service is discontinued or whether a former customer may obtain service under this rule at any time.

MCI has no comment on this issue at this time.

8. Definition of Class A and Class B companies (WAC 480-120-021, WAC 480-120-302)

The rules define a "Class A" company as one with 2 percent or more of the state's access lines and a "Class B" company as one with less than 2 percent of the lines. Class B companies are exempt from various reporting requirements. Staff notes that the statute provides that access lines of affiliated companies be counted in measuring the 2 percent threshold, while the definition in the rule does not include this provision.

Staff also observes that the terms are defined twice in the rules: 480-120-021 Definitions and 480-120-302(1) Accounting requirements for companies not classified as competitive. The latter definition has more information about calculating the 2 percent threshold, and it provides a "safe harbor" value based on 1998 information.

Staff also notes the dispute about whether the Class A/Class B distinction applies to companies that are classified as competitive.

MCI recommends that the Commission modify the rule to exempt competitive local exchange carriers, particularly non facilities based carriers, from reporting requirements. MCI provides local residential service in Washington through the purchase of UNE-P from Qwest. MCI does not provide local residential service to any customers in Washington through the use of the company's own network facilities. Qwest prohibits physical access to its network equipment to its UNE-P wholesale customers. Thus, UNE-P providers are reliant on Qwest to install the UNE-P providers' end user customers' service as well as to maintain and repair their customers' service. UNE-P providers like MCI have no direct control over the provisioning and maintenance of the Qwest facilities it uses to offer UNE-P based service in Washington. Under these circumstances, service quality reporting requirements should not be imposed on non facilities based CLECs.

Further, if the Commission exempts CLECs from the reporting requirements, the public interest would be adequately protected by competitive forces and the Commission's regulatory oversight. As a competitive carrier, MCI is driven by market forces to provide timely service to its customers, where such service is within MCI's control. Because Washington customers are able to vote with their feet and switch carriers, MCI has a competitive incentive to provide service quality that meets and exceeds its customers' expectations whenever the underlying service is within MCI's control. With the presence of market-based incentives, no need exists for regulatory incentives such as service quality reporting.

9. Prohibition on using ADADs to dial unlisted numbers (WAC 480-120-253)

WAC 480-120-253(5)(c) prohibits the use of automatic dialing and announcing devices (ADADs) to call unlisted telephone numbers.

In Docket UT-030273, the Commission apparently granted an exemption from this requirement to Qwest Corporation and said the requirement should be given further consideration. It noted that the term "unlisted" is not defined and difficult to interpret, that the prohibition applies even where there is an existing relationship, and that the prohibition cannot be waived by the called party. Staff notes that it appears that ADADs are commonly used, without objection, for non-commercial purposes that include the dialing of unlisted numbers.

MCI requests that the Commission repeal the prohibition against the use of automatic dialing and announcing devices to call unlisted numbers, particularly when the call is placed to a current MCI customer. ADADs are commonly used now by companies to contact existing customers and to leave recorded messages regarding account maintenance. This has proven to be an economic, efficient and convenient way to manage customer service issues, like delinquent accounts. The use of ADADs is not only preferable from the company's perspective but it is also convenient from a customer perspective. Through the use of ADAD and recorded messages, customers are kept informed about account maintenance issues. No compelling reason exists to prohibit

companies from using these devices to contact their existing customers, even those whose numbers are unlisted.

In addition, MCI agrees with the points raised by Qwest in its request for exemption from this rule. For these reasons, MCI asks the Commission to repeal the rule.

10. Clarify obligation of LECs to update E-911 information (WAC 480-120-450)

WAC 480-120-450(2)(e) requires LECs to resolve reports of data base errors within five working days. In Docket UT-030394 the WUTC issued an interpretive statement:

> Subsection (2)(e) of WAC 480-120-450 requires LECs to resolve reports of data base errors within five working days. That obligation falls on LECs in their role as service providers. That subsection does not impose those obligations on LECs that administer an E-911 data base, but do not provide service at the location where an error is reported.

This is another issue where non facilities based CLEC have no control over their ability to comply with such a rule. The ILEC that owns the facilities over which service is provided owns the data base in which E-911 service information is stored. Because non facilities based providers do not have the ability to comply with such a rule, they should be exempted from its application.

11. Cross-references to "deceptive practices" (WAC 480-120-173, 480-120-122)

MCI has no comment on Staff's proposal at this time.

12. Application of terminating access rule to CLECs (WAC 480-120-540)

The WUTC has granted exemptions to several CLECs permitting them to charge a higher terminating access rate than is permitted by WAC 480-120-540. These CLECs may charge up to the amount that Qwest and Verizon charge, including their universal service rate elements, even though the CLECs do not have customers in high-cost locations.

During the last review of WAC 480-120, the WUTC considered whether to incorporate this treatment of CLECs into the rule itself (thereby avoiding the need for company-specific exemptions) or ending the exemptions (thereby requiring CLECs to charge no more than incremental cost for terminating access).

MCI believes that these issues should be addressed as part of the larger issue of intercarrier compensation. MCI requests that the Commission open a proceeding to explore the issues of intercarrier compensation in the context of today's telecommunications marketplace. At a minimum, access charges should be restructured to eliminate all non cost-based rate elements. The intercarrier compensation system

should be structured to achieve competitive neutrality, which does not exist in today's structure.

13. Requirement to offer WTAP service (WAC 480-122-020)

WAC 480-122-020 requires that any local exchange company with more than 100 residential customers offer the discounted WTAP service to low-income applicants. The Commission granted a temporary exemption to this requirement in July 2003, after DSHS changed the reimbursement formula for non-incumbent local exchange companies (Docket UT-030867).

Staff suggests that the Commission could consider whether to remove this requirement from the rule. Another possible action would be to revise the method of applying the resale discount to increase the margin that CLECs earn when they resell incumbents' service to WTAP customers.

MCI currently offers WTAP service to low income applicants in Washington. MCI has no comment on Staff's proposal at this time.

14. Response to informal complaints (WAC 480-120-166)

Staff notes that subsection (11) of the rule on informal customer complaints has resulted in some confusion about the circumstances under which a company is required to respond to a staff request for information. The subsection does not refer to subsection (8), and it may duplicate the requirement in subsection (9).

MCI has no comments regarding the Staff proposal at this time.

15. Emergency contact information (WAC 480-120-414)

The current rule on emergency plans and contacts requires that all telecommunications maintain emergency plans and provide the Commission with contact information. Staff notes that several companies that have no network of their own (pure resellers) believe that the plans and contact information are unnecessary for their companies.

MCI has no comments on this issue at this time.

16. Definition of a tariff change not subject to statutory notice (WAC 480-80-123)

MCI has no comments on the proposal on this rule at this time.

17. Requirement to include contact information in price lists (WAC 480-80-102)

WAC 480-80-102(1)(f) requires that the title page of each tariff include "the complete name, address, phone number, unified business identifier (UBI) number, and if available, the mail address and web page address of the issuing utility."

The corresponding rule for price lists, 480-80-204(2), does not require that this information be included on the title page.

MCI has no objection to including this information on the title page to its price lists.

Respectfully Submitted,

Michel Singer Nelson