BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re:	)	Telecommunications Companies,
	)	Chapter 480-120 WAC – Access To Premises
Telecommunications	)	Docket UT-990146
Rulemaking	)	

COMMENTS OF AT&T AND WORLDCOM

As permitted by the Washington Utilities and Transportation Commission's (the "Commission") March 5, 2001 Opportunity to Submit Written Comment on Draft Access to Premises Rule *et.al*. in the above styled docket, AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (hereinafter "AT&T") and WorldCom Inc. on behalf of its regulated subsidiaries operating in Washington ("WorldCom"), hereby submit their written comments to the alternative access to premises rule, WAC 480-120-049, proposed by Commission staff (the "proposed rule").

Problems with competitive access in MTEs have been noted by the Federal Communications Commission ("FCC") in its Building Access Order.[1] In that order the FCC commented that CLECs have faced great barriers to MTE access including "hav(ing) been denied access to buildings completely, or have been charged exorbitant rates for access to MTEs or hav(ing) been subjected to unreasonable conditions." *Id.* at ¶ 17. Furthermore, the FCC found that "incumbent LECs are using their market control

[1] First Report and Order and Further Notice of Proposed Rulemaking in WT Docket No. 99-217, Fifth Report and Order and Memorandum Opinion and Order in CC Docket No. 96-98, and Fourth Report and Order and Memorandum Opinion and Order in CC Docket No. 88-57, *Promotion of Competitive Networks in Local Telecommunication Markets, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network* (rel. Oct. 25, 2000) (Building Access Order)

over on-premises wiring to frustrate competitive access to multitenant buildings." *Id.* at ¶ 19. Regarding MTE building owners, the FCC has found that they have "the ability and incentive to extract excessive profits from the provision of telecommunications service by unreasonably restricting competitive LEC's access to their buildings." *Id.* at ¶ 23. Likewise, the incumbent LECs have been limiting consumer choice having both "the ability and the incentive to deny reasonable access (to essential facilities in MTEs) to competing carriers." *Id.* at 24.

If adopted, the proposed rule will assist in removing the competitive barriers that CLECs such as AT&T and WorldCom have been facing in providing competitive telecommunications services to Washington consumers located in MTEs. *See e.g.* Complaint in Docket No. UT-003120. As experienced competitive local exchange carriers ("CLECs") that seek to provide competitive local telecommunication services to multi-tenant environments ("MTEs") in Washington, AT&T and WorldCom require the protection afforded in the proposed rule. Accordingly, they applaud the proactive approach the Commission staff is taking in its proposed draft and supports its adoption. At the same time, AT&T and WorldCom believe that the below listed changes would assist in appropriately "leveling the playing field" for CLEC access and wiring in Washington MTEs.

1) The restrictions in § 2 appear to be limited to terms within contracts between companies and MTE owners. Such exclusivity provisions and other prohibited terms may also be set forth in tariffs, price list or practices of companies or may be the result of oral communications between a company and the MTE owner. Irrespective of where the prohibited terms reside, such terms are inappropriate and

serve to deter competition and the accessibility contemplated by the FCC. AT&T and WorldCom propose that §2 be expanded to broaden the applicability of the proposed rule.

2) The restrictions located in the proposed rule § 2(a) and (c) appear to limit the proposed rule enforcement to situations where a tenant had already requested a telecommunications service. Such limitation may actually cause unnecessary service delays once a tenant does request competitive services, making the CLEC non-competitive and waylaying effective competition. In many situations, CLECs such as AT&T and WorldCom groom and wire an MTE building before actually marketing or providing the services, in part, so that there will be no delay in implementation when AT&T and WorldCom actually market the services. There should be provisions in the rule which allow AT&T and WorldCom to do so, unencumbered by contractual terms between the CLEC owner and ILEC prohibiting AT&T and WorldCom's provisioning, marketing and grooming efforts. In order to remedy this, § (2)(a) should read in relevant part "…to perform necessary functions, including but not exclusively, grooming and wiring a multi-unit premises for provisioning of services to, and installation, maintenance, repair, testing, and removal of telecommunications facilities for the provisioning of service to tenants in the MTE." § (2)(c) should be edited to strike "at a tenant's request."

3) The restriction proposed in § 2(a) only prohibits terms that "unreasonably" prohibit such access. As described by the FCC, there is incentive for the ILEC to keep out effective competition. If the proposed rule were adopted without

changes, the ILEC could maintain discriminatory access and wiring terms in contracts between itself and multi-unit premises owners claiming such terms are "reasonable." This could cause a time consuming, litigious battle in front of the Commission resulting in further delay for Washington consumers to obtain competitive telecommunications services. To avoid this ambiguity, either the term unreasonable should be stricken or there should be a presumption of unreasonableness, which is consistent with FCC findings of discriminatory ILEC intent.

4) Section 2 of the proposed rule indicates that the rule applies to "contracts pertaining to access and wiring between companies and owners of multi-unit premises." Section 2 is not clear as to whether it applies to existing contracts and the discriminatory clauses therein or just contracts made in the future. AT&T and WorldCom would recommend that the restrictions in § 2 of the proposed rule be applicable in all existing contracts and clauses therein. (See also the comments above in Paragraph 1 regarding expanding the applicability of proposed rule § 2.) Accordingly, AT&T and WorldCom recommend that § 2 be edited to reflect that intent. In addition, AT&T and WorldCom recommend that § 3 be amended to state that any provision in any existing agreement, price list, tariff or practice that is contrary to § 2 is void and unenforceable.

Accordingly, AT&T and WorldCom recommend that the proposed rule be revised as follows to reflect the concerns raised above:

(2) <u>It shall be unlawful for a company to engage in any practice, maintain any tariff or price list or to enter into any agreement with owners of multi-unit premises relating to access to multi-unit premises, including but not limited to</u>

inside wiring, intra-building cabling and intra-campus wiring that: ~~In contracts pertaining to access and wiring between companies and owners of multi-unit premises, the following terms shall not be included~~

a. ~~Any terms that unreasonably~~ restricts the ability of another company to enter a multi-unit premises to perform necessary functions such as installation, maintenance, repair, testing and removal of telecommunications facilities for the provisioning of service to ~~a~~ tenants in the multi-unit premises~~.~~;

b. ~~Any term that~~ grants an exclusive easement, right-of-way, or license to any company~~.~~;

c. ~~Any term that~~ precludes any company from negotiating with the owner of a multi-unit premises at a tenant's request.;

d. ~~Any term that~~ has the effect, directly or indirectly, of diminishing or interfering with the right of tenants to use or receive telecommunications service from other companies.

~~e. Any term that discriminates in favor of any one company with respect to the provision of access or compensation requested.~~

(3) Any provision of an existing easement, right of way or license or other agreement, practice, price list or tariff that is inconsistent with subsection (2) above shall be void and unenforceable. ~~No company may undertake a requested change in service or alteration of facilities on property covered by an exclusive or restrictive easement, right-of-way, or license until the agreement or grant is modified to remove the exclusivity or restriction.~~

AT&T and WorldCom believe the above listed changes will assist in allowing CLECs access into multi-tenant environments to provide competitive telecommunications services to Washington consumers. AT&T and WorldCom appreciate the opportunity to comment on this matter and look forward to the stakeholder workshop.

RESPECTFULLY submitted this 15th day of March 2001.

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