

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of)	DOCKET NOS. UT-031459
COMCAST PHONE OF)	and UT-031626 (consolidated)
WASHINGTON, LLC)	
)	ORDER NO. 02
)	
)	PREHEARING CONFERENCE
)	ORDER
)	
.....)	

- 1 **PROCEEDINGS:** Docket No. UT-031459 concerns a Penalty Assessment against Comcast Phone of Washington, LLC d/b/a Comcast Digital Phone. The Commission entered its Penalty Assessment in the amount of \$1,000, pursuant to RCW 80.04.405, on September 12, 2003. Comcast filed its "Application for Mitigation of Penalties or for Stay Pending Resolution of Petition for Interpretive and Policy Statement or Declaratory Order" on September 30, 2003. Commission Staff filed its Response on October 20, 2003.

- 2 Docket No. UT-031626 concerns Comcast's "Petition for an Interpretive and Policy Statement or a Declaratory Ruling That WAC 480-120-439 Does Not Apply to Comcast Phone of Washington, LLC, or an Order Granting Exemptions from Reporting Regulations," filed on October 2, 2003. The petition raises issues concerning the interpretation and application of parts of chapter 480-120 WAC, including WAC 480-120-439.

- 3 The Commission entered its Order Consolidating Proceedings And Denying Petition For An Interpretive And Policy Statement Or A Declaratory Ruling on October 24, 2003. The Commission conducted a prehearing conference on November 17, 2003, before Administrative Law Judge Dennis J. Moss.

4 **PARTY REPRESENTATIVES:** Judith A. Endejan, Graham & Dunn PC, Seattle, Washington, represents Comcast. Gregory J. Kopta, Davis Wright Tremaine LLP, Seattle, Washington, represents Time Warner Telecom of Washington LLC (“TWTC”). Letty S. D. Friesen, AT&T Law Department, Denver, Colorado, represents AT&T Communications of the Pacific Northwest and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively “AT&T”). Michel L. Singer Nelson, MCI Senior Regulatory Attorney, Denver, Colorado, represents MCI. Arthur A. Butler, Ater Wynne LLP, Seattle, Washington, represents WeBTEC. Adam Sherr and Lisa A. Anderl, Qwest, Seattle, Washington, represent Qwest Corporation. Simon ffitich, Assistant Attorney General, Seattle, Washington, represents the Public Counsel Section of the Washington Office of Attorney General. Shannon E. Smith, Assistant Attorney General, Olympia, Washington, represents the Commission’s regulatory staff (Commission Staff or Staff).¹

5 **PETITIONS TO INTERVENE; REQUESTS FOR INTERESTED PERSON STATUS:** The following persons filed petitions to intervene:

1. Time Warner Telecom of Washington LLC
2. AT&T Communications of the Pacific Northwest and AT&T Local Services on behalf of TCG Seattle and TCG Oregon
3. MCI
4. WeBTEC, and
5. Qwest Corporation

6 Staff objected to all of the petitions to intervene except for WeBTEC. Staff’s objection that TWTC, MCI, and AT&T have not shown that they have two

¹ In formal proceedings, such as this case, the Commission’s regulatory staff functions as an independent party with the same rights, privileges, and responsibilities as any other party to the proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding ALJ, and the Commissioners’ policy and accounting advisors from all parties, including Staff. RCW 34.05.455.

percent or more of the access lines in Washington, and therefore have not established that WAC 480-120-439 even arguably applies to them at this time is not well taken. These CLECs all do business in Washington and, if they do not have two percent or more of the access lines in Washington today, they may reach that level of service in the future, arguably triggering the application of WAC 480-120-439. Accordingly, these CLECs have a substantial interest in one of the fundamental issues raised by Comcast's pleadings: whether WAC 480-120-439 applies to CLECs or only to ILECs.

7 Staff's objection to Qwest's participation as a party also is overruled. Qwest asserts in its petition that "parity of regulation requires that all Class A companies be subject to the same level of regulation with regard to service quality requirements." Given that Qwest is subject to WAC 480-120-439, its interest in protecting its view of regulatory parity establishes its substantial interest in this proceeding.

8 The petitioners have established their respective substantial interests in the proceeding. It also appears that their participation will be in the public interest. The petitions to intervene are granted.

9 **DISCOVERY:** There do not appear to be any material facts in dispute. Accordingly, there is no need for discovery. This finding is without prejudice to any party later seeking discovery by motion on a showing that such process is required.

10 **PROCESS AND PROCEDURAL SCHEDULE:** The parties agree that the disputed matters in these consolidated dockets can be resolved without the necessity for an evidentiary hearing. Arguments will be presented by cross-motions for summary determination to be filed by December 5, 2003, with replies to be by December 23, 2003.

- 11 **FILING; COPIES OF MATERIALS:** Parties must submit an original and 13 copies of all documents filed. All filings must be mailed to the Commission Executive Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington 98504-7250, or delivered by hand to the Commission Executive Secretary at the Commission's records center at the Washington Utilities and Transportation Commission, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington, 98504-7250. Both the post office box and street address are required to expedite deliveries by U.S. Postal Service.
- 12 An electronic copy of all filings must be provided by e-mail delivery to <records@wutc.wa.gov>. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette including the filed document(s). The Commission prefers that parties furnish electronic copies in .pdf (Adobe Acrobat) format, supplemented by a separate file in MS Word 6.0 (or later), or WordPerfect 5.1 (or later) format.
- 13 All paper copies of testimony, exhibits, and briefs are required to conform to the publication guidelines attached to this Order as Appendix 1 and to the Commission's procedural rules governing filings. The Commission may require a party to refile any document that fails to conform to these standards.
- 14 **NOTICE TO PARTIES:** Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this prehearing conference order will control further proceedings in this matter, subject to Commission review.

DATED at Olympia, Washington, and effective this 21st day of November 2003.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DENNIS J. MOSS
Administrative Law Judge

APPENDIX 1

I. Requirements for ALL paper copies of testimony, exhibits, and briefs

A. All paper copies of briefs, prefiled testimony, and original text in exhibits **must** be

- On 8 ½ x 11 paper, punched for insertion in a 3-ring binder,
- Punched with OVERSIZED HOLES to allow easy handling.
- Double-spaced
- 12-point or larger text and 10-point or larger footnotes, Palatino Linotype, Times New Roman or equivalent serif font.
- Minimum one-inch margins from all edges.

Other exhibit materials need not be double-spaced or 12-point type, but must be printed or copied for optimum legibility.

B. All electronic and paper copies must be

- SEQUENTIALLY NUMBERED (all pages). **THIS INCLUDES EXHIBITS.** It is not reasonable to expect other counsel or the bench to keep track of where we are among several hundred (or sometimes even just several) unnumbered pages.
- DATED ON THE FIRST PAGE OF EACH ITEM and on the label of every diskette. If the item is a revision of a document previously submitted, it must be clearly labeled (REVISED), with the same title, and with the revision date clearly shown.

II. Identifying exhibit numbers; Exhibits on cross-examination.

A. **Identifying exhibits.** Parties are required to mark prefiled testimony and exhibits for identification. Parties must mark all written testimony and exhibits for identification prior to submission as follows:

- (i) Identify the sponsoring witness by including the witness's initials,
- (ii) Place a hyphen after the witness's initials and insert a number; beginning with Arabic numeral 1, and sequentially number each subsequent exhibit (including any subsequent written testimony) throughout the proceeding;
- (iii) Place the letter "C" after the number if the testimony or exhibit includes information asserted to be confidential under any protective order that has been entered in the proceeding.

For example, John Q. Witness's prefiled testimony and accompanying exhibits should be marked as follows:

Testimony or Exhibit	Marked for identification
John Q. Witness's prefiled direct testimony	Exhibit No. ____ (JQW- 1)
First exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-2)
Second exhibit to John Q. Witness's prefiled direct testimony (confidential)	Exhibit No. ____ (JQW- 3C)
Third exhibit to John Q. Witness's prefiled direct testimony (non-confidential)	Exhibit No. ____ (JQW-4)
John Q. Witness's prefiled rebuttal testimony	Exhibit No. ____ (JQW-5)
First exhibit to John Q. Witness's prefiled rebuttal testimony (non-confidential)	Exhibit No. ____ (JQW-6)

Counsel and other party representatives who are unfamiliar with this method of marking testimony and exhibits for identification should ask the presiding officer for further guidance.

- B. **Exhibit List:** Prepare a list of your exhibits with their premarked designations and descriptions in digital form and in a format specified by the Commission. You will be required to submit your exhibit list to the presiding officer prior to the evidentiary hearing. This will simplify identification and ease administrative burdens.

NOTE: Be prepared to submit all of your possible exhibits on cross-examination several days prior to the hearing. We will schedule a prehearing conference to deal with the exhibits as close as possible to the hearing itself, but we have administrative needs that require pre-filing.

APPENDIX 2

PARTIES' REPRESENTATIVES

DOCKET NOS. UT-031459 and UT-031626 (consolidated)

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Comcast	Judith A. Endejan Graham & Dunn PC Pier 70, 2801 Alaskan Way Suite 300 Seattle, WA 98121-1128	206-340-9495	206-340-9599	Jendejan@GrahamDunn.com
Time Warner Telecom of Washington, LLC ("TWTC")	Gregory J. Kopta Davis Wright Tremaine LLP 2600 Century Square 1501 Fourth Avenue Seattle, WA 98101-1688	206-628-7692	206-628-7699	gregkopta@dwt.com
AT&T	Letty S. D. Friesen AT&T Law Department 1875 Lawrence Street, Suite 1575 Denver, CO 80202	303 298-6475	303 298-6301	lsfriesen@att.com
MCI	Michel L. Singer Nelson Senior Regulatory Attorney MCI 707 17 th Street, Suite 4200 Denver, CO 80202	303 390 6106	303 390 6333	Michel.singer_nelson@mci.com
WeBTEC	Arthur A. Butler AterWynne LLP 601 Union St., Suite 5450 Seattle, WA 98101-2327	206 623-4711	206 467-8406	aab@aterwynne.com
Qwest	Lisa A. Anderl Adam L. Sherr Qwest 1600 7 th Avenue, Room 3206 Seattle, WA 98191	206 345-1574	206 343-4040	lisa.anderl@qwest.com adam.sherr@qwest.com
Public Counsel	Simon J. ffitich Assistant Attorney General Public Counsel Section Office of Attorney General 900 Fourth Avenue, Suite 2000 Seattle, WA 98164-1012	206-389-2055	206-389-2058	simonf@atg.wa.gov
Commission Regulatory Staff	Shannon E. Smith Assistant Attorney General 1400 S. Evergreen Park Dr. S.W. P.O. Box 40128 Olympia, WA 98504-0128	360-664-1160	360-586-5522	ssmith@wutc.wa.gov