

Agenda Date: June 11, 2003  
Item Number: C1

**Docket:** UT-030860  
**Company:** All Telecommunications Companies

**Staff:** Robert Shirley, Telecommunications Policy Analyst  
Rebecca Beaton, Telecommunications Policy Analyst

Background:

On June 5, 2003, The Washington Utilities and Transportation Commission (Commission) requested comments on potential emergency rule prior to the June 11, 2003, regularly scheduled open meeting in anticipation of requests stemming from the change in Washington Telephone Assistance Program (WTAP) reimbursement rates, and anticipating the possibility of disruptions of service. The Commission did not determine that adoption of an emergency rule is necessary but sought comments on the subject.

Under consideration is an emergency rulemaking that would change the effective date of WAC 480-120-174 from July 1, 2003 to June 11, 2003, or such other changes as the Commission may determine are in the public interest and necessary to preserve the public health, safety, or general welfare.

WAC 480-120-174 states:

**WAC 480-120-174 Restoring service based on Washington telephone assistance program (WTAP) or federal enhanced tribal lifeline program eligibility.** (1) Local exchange companies (LECs) must restore service for any customer who has had basic service discontinued for nonpayment under WAC 480-120-172 (Discontinuing service – Company initiated) if the customer was not a participant in either Washington telephone assistance program (WTAP) or the federal enhanced tribal lifeline program at the time service was discontinued and if the customer is eligible to participate in WTAP or the federal enhanced tribal lifeline program at the time the restoration of service is requested. To have service restored under this section, a customer must establish eligibility for either WTAP or the federal enhanced tribal lifeline program, agree to continuing participation in WTAP or the federal enhanced tribal lifeline program, agree to pay unpaid basic service and ancillary service amounts due to the LEC at the monthly rate of no more than one and one-half times the

telephone assistance rate required to be paid by WTAP participants as ordered by the commission under WAC 480-122-020, agree to toll restriction, or ancillary service restriction, or both, if the company requires it, until the unpaid amounts are paid. Companies must not charge for toll restriction when restoring service under this section.

(2) In the event a customer receiving service under this section fails to make a timely payment for either monthly basic service or for unpaid basic service or ancillary service, the company may discontinue service pursuant to WAC 480-120-172.

(3) Nothing in this rule precludes the company from entering into separate payment arrangements with any customer for unpaid toll charges.

Program information:

The WTAP program provides discounted residential local exchange service to eligible low-income persons who request participation in the program. The WTAP program is funded by a \$0.13 per-month excise tax on wireline access lines. The program participant pays a reduced monthly rate (currently \$4.00) for residential local exchange service and the WTAP fund, in combination with a similar federal program, reimburses local exchange companies (LECs) for the discounts provided to the customer. The program is operated on a daily basis by the Department of Social and Health Services; the Commission also has rulemaking authority and sets the statewide lifeline assistance rate (the \$4.00 rate) and the excise tax rate, up to a maximum of \$0.14.

On May 30, 2003, the Department of Social and Health Services (DSHS) adopted an emergency rule that, among other things, limited the reimbursement amount available to LECs. WAC 388-273-0035. In response, three local exchange companies that provide service to WTAP clients using resale and UNE-P have filed requests for exemptions of WAC 480-120-083, cessation of telecommunications service; WAC 480-122-020, Washington telephone assistance program rate; WAC 480-120-081, discontinuance of service; and RCW 80.36.410 through 475.<sup>1</sup> The purpose of the requested exemptions would to relieve the companies of the obligation to provide service to WTAP eligible clients at the telephone assistance program rate, and to permit the companies to discontinue

---

<sup>1</sup> See Docket Nos. UT-030867, UT-030879, and UT-030891.

service to existing WTAP clients with little or no notice. Additionally, one of those companies indicated that it might need to stop service even if the exemptions are not granted in order to prevent losses that could reach \$100,000 by the end of June, 2003.

#### Request for Comments

Comment was requested on present circumstances, and included the following questions:

- (1) Is there an actual risk that some WTAP eligible customers may lose access to 911 services as the result of an abrupt discontinuation of service;
- (2) How many WTAP eligible customers who may be at risk of a sudden cessation of service;
- (3) How much time will it take a customer to find and be connected by an alternative local exchange company;
- (4) Would a change in the effective date for WAC 480-120-174 assist WTAP eligible customers who may experience discontinuation of service with little or no notice;
- (5) What is the number of WTAP customers that may be assisted rapidly in obtaining substitute service by adoption of an emergency rule to change the effective date of WAC 480-120-174 from July 1, 2003 to June 11, 2003; and
- (6) Does a risk of discontinuation of service to WTAP eligible customers warrant the immediate adoption, amendment, or repeal of a rule necessary to for the preservation of public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest. *RCW 34.05.350*.

Does the apparent risk of sudden disconnection of local exchange service and the consequent loss of 911 services are sudden and pressing circumstances that warrant dispensing with the usual period for notice and opportunity to comment.

#### Summary of Comments:

##### 1. Public Counsel:

Public Counsel's focus is on the interests of consumers that are served by the Petitioners. Public Counsel cannot support the Petitions as filed.

Public Counsel is concerned customers, including non-WTAP, may experience sudden disconnection of phone service, including loss of access

to 911 and encourages all parties to consider actions to minimize the burden on customers and allow customers of the Petitioners to be served by another carrier (with appropriate notice) without disruption of service. It is critical to ensure access to 911 services.

Public Counsel does support the Commission's adoption of an emergency rule to change the effective date of WAC 480-120-174 from July 1 to June 11 with effective notice by carriers to all WTAP and Tribal Lifeline consumers as required under WAC 480-120-174. WAC 480-120-174 references WAC 480-120-172 which is scheduled to become effective July 1, so it suggests it may be necessary to change the effective date of WAC 480-120-172 as well. The burden on carriers as a result of an emergency rule moving the effective date 19 days is minimal as the rule was adopted by the Commission six months ago.

**2. Verizon:**

Verizon believes few of the affected customers are in its service territory and the new rule whose effective date may be accelerated is not relevant to the service discontinuance situation. Verizon states the Commission should not allow exceptions to the new rules and that there is no need for emergency or permanent rule changes, nor will there be an impact on access to 911 services.

WAC 480-120-174 is not applicable to the situation where CLECs may cease providing basic service to both WTAP and possibly non-WTAP customers as well. The rule applies to restoring service, which references reconnecting customers after they have been temporarily disconnected, but before permanent disconnection. Verizon is preparing to comply with the new rule by inserting a step in its disconnect process to inform customers of the WTAP option. Restoring service does not refer to a former customer applying for new service, which is what the situation would be for CLEC customers opening new service accounts with Verizon. The Commission's current and new rules should be allowed to work and that the rules contemplate that with advance notice customers will sign up for service with other carriers. Verizon is prepared to handle orders from such applicants in the normal course of business and is not

aware of any circumstances that would result in an abrupt disconnect of customers.

**3. Qwest:**

There is a risk that any customer may lose access to 911 services as the result of an abrupt discontinuation of service. Qwest believes the most effective action the Commission can take to stem the potential adverse effects of service disruption, including the loss of access to 911 services, is to ensure that the service provider that is discontinuing service meets the requirements of WAC 480-120-083 (Cessation of telecommunications services). The companies that are threatening cessation of service in areas of the state intend to continue operating in other areas of the state thus the Commission should be able to enforce WAC 480-120-083 in order to facilitate a transition between service providers.

With the proper notification of cessation of service required under WAC 480-120-083, customers should learn of service cessation within a week of the notice being mailed. Customers will then be able to call alternative providers for service. Most installation intervals are less than 3 days. A change in the effective date for WAC 480-120-174 would not stem the effect of an abrupt discontinuation of service, including the possible loss of access of 911 services

**4. Tel West Communications:**

Tel West will be unable to provide services if DSHS sets the amount of compensation based on ILECs retail rates. Tel West is financially unable to provide services to WTAP customers at the rate established by DSHS' emergency rule in WAC 388-273-0035 and will cease providing services to WTAP clients, with the likely result being no access to 911 services unless Qwest, Sprint and Verizon allow such clients to continue to have access. The company believes their customers will have difficulty obtaining services from other carriers based on credit history. A change in effective date for the WAC 480-120-174 has no effect on the financial impact of the DSHS rule to Tel West and the company's ability to provide service to WTAP clients, thus it cannot ascertain a benefit by changing the effective date of WAC 480-120-174.

**5. Citizens Utility Alliance of Washington (CUA):**

The CUA is a program of Spokane Neighborhood Action Programs (SNAP). CUA supports changing the effective date of WAC 480-120-174 to prevent disruptions to low income clients phone service and to allow support programs to assist households in the transition to another service provider. Disconnection has serious health, safety and economic consequences to low-income households.

In supplemental comments that respond to Verizon, CUA states that it considers Verizon's interpretation of the rule to be inaccurate. Verizon, it states, asserts its own definition of "restoring service" and interprets the rule to apply only in instances of "temporary disconnection" in direct contradiction to paragraph 168 of the adoption order filed December 12, 2002 which states, "We have adopted a rule that provides for generous repayment terms for prior obligations arising out of local service." CUA

states the rule applies to all disconnections. It ask the Commission to reject Verizon's interpretation of the WAC 480.120.174 in order to prevent Verizon and other companies from failing to abide by its terms.

**6. Washington Protection and Advocacy System:**

The Washington Protection and Advocacy System (WPAS) is concerned about any changes to the rules and the DSHS WTAP program. Individuals with disabilities have experienced reductions in financial assistance and services as a result of the recession. Some have poor credit as a result of unauthorized telephone use by caretakers who ran up bills that were difficult to pay on a limited income. An interruption in service may prohibit or complicate finding another carrier. The DSHS proposal to raise the customer co-pay for WTAP to \$8.50 is of great concern and there is a question as to whether an increase would potentially reduce the federal funding for the WTAP. The Consortium asks whether a thorough examination has been given to the increase of the state excise tax to 14 cents.

**7. Seattle Telecom Consortium:**

The Seattle Telecom Consortium supports the comments submitted by Public Counsel and CUA to change the effective date. The Consortium

further suggests broad changes to WAC 480-120-174 to assure it will be applicable to clients already enrolled in WTAP through any carrier and applicable to customers disconnected for any reason. The Consortium suggests deleting the language in the rule that references nonpayment under WAC 480-120-172 and WTAP or Tribal lifeline program references for nonpayment as well as removing payment requirements for ancillary service. The consortium supports customer choice of company and supports the short-term goal of keeping WTAP customers connected. They caution the DSHS emergency rule restricting reimbursement rates needs to be balanced by stronger regulation ensuring WTAP eligible customers connection to company of choice. The Consortium suggests a transparent administration of the state WTAP, updated WTAP website, WTAP phone line information and program alerts to consumer advocates and consumers through outreach channels about choices and emergency rules.