

BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	DOCKET NO. UT-
XO WASHINGTON, INC., TCG	)	
OREGON, TCG SEATTLE, PAC-WEST	)	PETITION
TELECOMM, INC., GLOBAL	)	
CROSSING LOCAL SERVICES, INC.,	)	
AT&T COMMUNICATIONS OF THE	)	
PACIFIC NORTHWEST, INC., AND	)	
ADVANCED TELCOM GROUP, INC.,	)	
	)	
For Waiver of RCW 80.36.150 and	)	
WAC 480-120-027(3)	)	
_____	)	

Pursuant to RCW 80.36.320 and WAC 480-120-024, XO Washington, Inc., TCG Oregon, TCG Seattle, Pac-West Telecomm, Inc., Global Crossing Local Services, Inc., AT&T Communications of the Pacific Northwest, Inc., and Advanced TelCom Group, Inc. (collectively “Joint Petitioners”) petition the Commission to waive the regulatory requirement that Joint Petitioners file contracts for services under RCW 80.36.150 and WAC 480-120-027(3). In support of their Petition, Joint Petitioners state as follows:

**DISCUSSION**

1. Each of the Joint Petitioners is registered and classified as a competitive telecommunications company authorized to provide telecommunications services in the state of Washington as provided in RCW 80.36.320 & 350.

2. The legislature has authorized competitively classified companies to file price lists instead of tariffs and has authorized the Commission to “waive other regulatory requirements under this title for competitive telecommunications companies when it determines that

competition will serve the same purpose as public interest regulation.” RCW 80.36.320(2); accord WAC 480-120-024.

3. Among the regulatory requirements in RCW Title 80 is the obligation of telecommunications companies to “file with the commission, as and when required by it, a copy of any contract, agreement or arrangement in writing with any other . . . corporation, association or person relating in any way to the construction, maintenance or use of a telecommunications line or service by, or rates and charges over and upon, any such telecommunications line.” RCW 80.36.150. The Commission, pursuant to this statutory provision, requires that “[c]ontracts of companies classified ‘competitive’ under RCW 80.36.310 shall be filed with the commission not later than five business days after execution.” WAC 480-120-027(3)(a).

4. The primary purpose of filing customer service contracts with the Commission is to enable the Commission to review those contracts to ensure that the services provided under contract, rather than the tariff, are priced above cost and are not being subsidized with revenues generated by captive ratepayers. As the Commission has recognized, contracts of competitively classified companies do not raise this concern because these companies have no captive ratepayers or market power to price below cost. *Compare* WAC 480-120-027(3)(a) *with* WAC 480-120-027(3)(b).

5. The other purpose of filing customer service contracts with the Commission to provide customers and potential customers with information about the prices, terms, and conditions for service being provided to other customers. Again, however, the market already serves this function for competitively classified companies. The services offered by each of the Joint Petitioners are available from at least one other provider – the incumbent local exchange company (“ILEC”) – and in most, if not all, cases, from multiple other providers. Potential

customers thus are able to comparison shop among several companies and negotiate the best deal available in the marketplace. When the service is available only from the ILEC, on the other hand, customers do not have access to sources of information about prices and terms other than the ILEC's tariff and contracts with other customers that vary from the tariff.

6. Experience is consistent with this concept. The Joint Petitioners are not aware that any consumer has ever reviewed or even sought to review any of their contract filings with the Commission. The Joint Petitioners further understand, as a result of proceedings in which the Commission has sought to penalize Electric Lightwave, Inc., for allegedly violating WAC 480-120-027(3), that Commission staff is also unaware of any actual consumer interest in reviewing customer contracts filed by competitively classified companies.

7. While filing contracts that competitively classified companies execute with their customers does not benefit consumers in light of market alternatives, the requirement to make such filings imposes substantial costs on the companies required to make those filings. Regulatory personnel must constantly monitor the companies' sales activities to ensure that they obtain customer contracts in sufficient time to summarize them and file them with the Commission. In addition to these administrative costs, companies apparently now face fines of \$1,000 per contract or \$100 per day if those contracts are not filed within five days of execution. Compelling competitively classified companies to incur these unwarranted costs represents a regulatory barrier to entry into Washington markets that the Commission can and should remove as an encouragement to the development of effective local exchange competition.

**PRAYER FOR RELIEF**

WHEREFORE, the Joint Petitioners request that the Commission grant the following relief:

A. Waiver for each of the Joint Petitions of the provisions of RCW 80.36.350 and WAC 480-120-027(3), including any revision, recodification, or additional rules promulgated pursuant to RCW 80.36.150; and

B. Such other relief as the Commission deems fair, just, reasonable, and sufficient.

RESPECTFULLY SUBMITTED this 8th day of March, 2001.

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By \_\_\_\_\_  
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