

June 5, 2003

TO: Interested Persons

RE: **Docket No. UT-030860**
Request for Comment on Consideration of an Emergency Rule –
Opportunity to Comment **No Later than Noon, Monday, June 9, 2003**

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 requests comments on an emergency rulemaking. We have not determined that we should adopt an emergency rule, however, we believe it is appropriate to take advantage of the time available to seek comments before the our June 11, 2003, regularly scheduled open meeting.

In addition to seeking written comments, if an emergency rule is considered on June 11, there will be an opportunity to comment at the meeting.

The Emergency Rule

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. 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.

Background

The WTAP program provides discounted residential local exchange service to eligible low-income persons who request participation in the program. (End Note 1). 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, two local exchange companies that provide service to WTAP clients using resale and UNE-P have contacted the Commission and informed Commission Staff that they would be filing requests for exemptions of WAC 480-120-083, cessation of telecommunications service, and WAC 480-122-020, Washington telephone assistance program rate. The purpose of the requested exemptions would to relieve the companies of the obligation to provide service to WTAP eligible clients at the telephones assistance program rate, and to permit the companies to discontinue 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.

An Emergency

In Docket UT-010588, the Commission determined that cessation of local exchange service, PBX, Centrex service, and private line service, without notice to customers, would prevent customers from locating alternative providers for these services prior to cessation and therefore would result in the loss of access to 911 services for some period of time. *Order at ¶ 8.* (End Note 2). The Commission found, at the time of adoption of the emergency rule in that docket, that initiating new service to a customer can take days, and sometimes weeks, depending on the complexity of the needed service. (End Note 3). *Id.* We have tentatively concluded that circumstances at present may be sufficiently like those that prompted the adoption of an emergency rule in UT-010558, and that we should seek comment on the possibility of adoption of an emergency rule at this time.

Request for Comments

Comment is requested on present circumstances, and

- (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 warrants 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? (end Note 4).

How and When to Comment

We would appreciate your written comments and request that you file them with the Commission no later than **Noon, Monday, June 9, 2003** for consideration at the June 11, 2003 open meeting of the Commission. The Commission requests, but does not require, that comments be provided in electronic format to enhance public access, for ease of providing comments, to reduce the need for paper copies, and to facilitate quotations from the comments. Comments may be submitted by electronic mail to the Commission's Records Center at records@wutc.wa.gov. Please include:

- The docket number of this proceeding (UT-030860)
- The commenting party's name
- The title and date of the comment or comments

An alternative method for submitting comments may be by mailing/delivering an electronic copy on a 3 ½inch, IBM-formatted, high-density disk, in .pdf Adobe Acrobat format or in Word 97 or later. Include all of the information requested above. The Commission will post on the Commission's web site all comments that are provided in electronic format. The web site is located at <http://www.wutc.wa.gov/030860>.

If you are unable to file your comments electronically or to submit them on a disk, the Commission will always accept a paper document. The Commission's mailing address is:

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

You may make comments on this topic at the Commission's open meeting on June 11, 2003, beginning at 9:30 a.m., if this emergency rule is on the agenda. You may call in advance of the meeting to determine if the rulemaking will be on the agenda. Please contact Robert Shirley at 360-664-1292, or bshirley@wutc.wa.gov if you would like to confirm if the item is on the agenda or if you have other questions related to this docket of the topic generally.

Sincerely,

/S/

CAROLE J. WASHBURN
Executive Secretary

End Notes

1. See RCW 80.36.410 – 475, and Chapter 134, Laws of 2003.
2. See General Order No. R-485, Order Adopting Rule on an Emergency Basis, Docket No. UT-010558 (May 11, 2001).
3. See Dockets UT-950200, UT-991358, UT-003013, UT-003120, UT-013019, and WAC 480-120-051, which permits local exchange companies up to five days to connect the simplest business and residence service.
4. In its Concise Explanatory Statement, the Commission stated that the key to the appropriate use of an emergency rule would appear to be not so much in the gravity of the possible harm, as in the existence of facts demonstrating a genuine need for the agency to act quickly to meet a sudden and pressing circumstance within the ambit of the particular agency's jurisdiction. Concise Explanatory Statement (Open Meeting Memo, May 9, 2001) Docket UT-010558 at pp. 4-5.

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