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① 6-11-03

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

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Kathy McCrary
Paralegal

June 9, 2003

Ms. Carole J. Washburn, Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
Olympia, WA 98504-7250

Re: Tel West Communications, LLC – Petition for Waiver of WAC 480-120-081, WAC 480-120-083, WAC 480-122-020 and RCW 80.36.410 through RCW 80.36.475

Dear Ms. Washburn:

Enclosed you will find the original and nineteen copies of the above-referenced Petition.

Please let me know if you have any questions.

Sincerely,

Richard A. Finnigan / km

RICHARD A. FINNIGAN

RAF/km
Enclosures

cc: Jeff Swickard
Don Taylor

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Before the
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of)
)
Petition of Tel West Communications, LLC for)
Waiver of WAC 480-120-081, WAC 480-120-)
083, WAC 480-122-020; and RCW 80.36.410)
- 80.36.475)

Docket No. UT-030891

Richard A. Finnigan
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(360) 956-7001

PETITION FOR WAIVER OF WAC 480-120-081, WAC 480-120-083, WAC 480-122-020 and RCW 80.36.410 THROUGH RCW 80.36.475

Counsel for Tel West Communications, LLC

TEL WEST COMMUNICATIONS, LLC

June 9, 2003

1 Tel West Communications, LLC ("Tel West") hereby petitions the Washington Utilities
2 and Transportation Commission ("Commission") for waiver of WAC 480-120-081,¹ applicable
3 to the discontinuance of service of telecommunication customers; and/or WAC 480-120-083,
4 applicable to the cessation of telecommunication services to some or all customers; and/or WAC
5 480-122-020, applicable to the Commission's rules obligating the Company to provide services
6 under the Washington Telephone Assistance Program ("WTAP"); and/or RCW 80.36.410
7 through 80.36.475,² applicable to establishment and administration of WTAP.
8
9

10 INTRODUCTION

11
12 On June 3, 2003, Tel West became aware that the Washington Department of Social and
13 Health Services ("DSHS") had adopted an emergency rule-making order significantly changing
14 the terms, conditions and rates under which it will reimburse telecommunication companies
15 which are providing services under WTAP. See, WAC 388-273-0035. Specifically, the
16 emergency rule reduces the amount that DSHS will reimburse a telecommunication provider to
17 the same amount paid to an incumbent local carrier, less customer and federal contributions.
18

19 Because of the significant financial impact these changes will have upon Tel West, the
20 Company brings this matter to the Commission under the general provisions of the Commission
21 and the provisions of WAC 480-120-015 and WAC 480-121-063,³ Exemption From Rules, and
22
23

24 ¹ On July 1, 2003, WAC 480-120-081 is replaced by WAC 480-120-172. This petition is addressed to both the
25 current and the soon to be applicable rule.

26 ² It is not clear that a waiver of these statutes is needed if the rule waivers are granted, but the statutory provisions are
27 included as a precaution.

28 ³ WAC 480-120-015 technically only applies to Chapter 480-120 WAC. Either the Commission's general authority
or the ability to grant competitive providers additional waivers can be read to apply to WAC 480-122-020.

1 requests waiver of the Commission's rules requiring provision of service under WTAP. Tel
2 West also requests waiver of the Commission's rules relating to discontinuance of service to
3 customers. The basis for the request is set forth below.
4

5
6 **BACKGROUND**
7

8 Tel West is a Competitive Local Exchange Carrier ("CLEC") that provides
9 telecommunication services in the State of Washington through a combination of 1) resale of the
10 retail products of incumbent local exchange carriers ("ILECS") Qwest, Sprint and Verizon, and
11 2) leased unbundled network elements ("UNEs") from Qwest and Verizon. Tel West currently
12 provides service to approximately 8,700 Washington customers, of which approximately 6,200
13 are WTAP customers.
14

15 Tel West's provision of service under WTAP began in April 2002 after notification from
16 the Commission's staff that Tel West is required to do provide service to WTAP customers under
17 the Commission's rules and Washington law, as referenced above. The staff further informed
18 Tel West that it was required to make the availability of WTAP known to its customers (and
19 potential customers) through bill messages and/or inserts, telephone queue announcements, and
20 commercial advertising. In compliance with the Commission's rules, Tel West began a
21 commercial advertising program, inserted messages onto its billing statements, and otherwise
22 made customers and callers aware of WTAP.
23
24

25 As a result of Tel West's efforts in this regard, the number of WTAP customers grew
26 rapidly. This rapid growth caused administrative burdens upon both Tel West and DSHS, which
27

1 repeatedly claimed it was being overwhelmed with Tel West's WTAP claims. Over the next
2 several months, Tel West attempted to find ways to process its claims in a faster and more
3 efficient fashion, but with little success, due to lack of cooperation from DSHS. Tel West's
4 compensation claims were often held up by DSHS due to DSHS's inability to process them
5 accurately and in a timely manner. Further, payments to Tel West have been consistently late
6 and below expected amounts. During this period of time, DSHS also informed Tel West that the
7 level of compensation being provided to Tel West and other similar service providers was rapidly
8 draining the program's funding, but also acknowledged that the compensation level being
9 provided was in accordance with the program's rules.
10
11

12 **ARGUMENT**

13
14
15 The new compensation schedule established by the DSHS in its emergency rule, WAC
16 388-273-0035, reduces the maximum monthly compensation level from \$50.00 per customer, per
17 month, to an amount equal to the monthly flat rate of the ILEC in the customer's serving area.
18 The new plan also reduces the maximum connection charge compensation level to one-half of
19 Tel West's connection fee or \$22.00, whichever is lower. Because Tel West must pay the
20 ILEC's retail monthly flat rate (minus a small discount), or lease UNEs (which in some areas
21 exceed the ILEC's monthly flat rate), in addition to paying its own administrative costs, it will
22 cost Tel West more to provide service than Tel West will collect in compensation from the
23 customer and the state and federal programs combined.
24
25

26 Following is a comparison of the previous and revised compensation levels for Tel West:
27

| Previous Compensation Effective Through May 31, 2003 | | Revised Compensation Effective June 1, 2003 | |
|---|----------------|--|----------------|
| Item | Amount | Item | Amount |
| Tel West Local Service Rate | \$49.99 | Tel West Local Service Rate | \$49.99 |
| Federal Subscriber Line Charge | \$6.00 | Federal Subscriber Line Charge | \$6.00 |
| Total Due Tel West | \$54.99 | Total Due Tel West | \$54.99 |
| Federal Programs Compensation | \$0.00 | Federal Programs Compensation | \$9.50 |
| WTAP Compensation | \$50.00 | WTAP Compensation * | \$5.00 |
| Customer Payment | \$4.00 | Customer Payment | \$4.00 |
| Total Payments to Tel West | \$54.00 | Total Payments to Tel West | \$18.50 |

* Under its new plan, DSHS calculates its "State Matching Credit" as \$3.50, plus a "State Remainder Credit" of \$1.50, for a total of \$5.00.

Under this revised compensation plan, Tel West's compensation is reduced by a total of about \$35.50 per customer (\$54.00 minus \$18.50), depending upon the ILEC rate involved. Based upon its current 6,200 WTAP customers, Tel West estimates that it will lose approximately \$220,000 per month, or \$2.6 million per year due to the change in compensation levels.

The emergency rule order implemented by DSHS on June 1, 2003, thus clearly imposes upon Tel West "undue hardship, of a degree or a kind different from the hardships imposed on similarly situated persons" (the ILECs) as required by WAC 480-120-015 for exemption from the Commission's rules. To the extent WAC 480-120-015 does not apply to an exemption from WAC 480-122-020, Tel West bases its request on the general powers of the Commission and WAC 480-121-063. Tel West, therefore, requests exemption from WAC 480-122-020 and RCW 80.36.410 through RCW 80.36.475 because of the hardship that continued provision of WTAP

1 service will impose upon Tel West. Additionally, Tel West requests exemption from WAC 480-
2 120-081, Discontinuance of Service, and WAC 480-120-083, Cessation of Service, for WTAP
3 customers to whom Tel West is currently providing service.
4

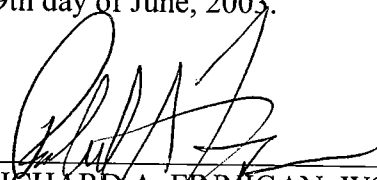
5 Unless the WUTC grants these exemptions, Tel West will suffer severe financial hardship
6 as described above, and absent the relief requested, may be forced to withdraw provision of
7 service entirely in the state of Washington.
8

9
10 **CONCLUSION**

11 Tel West's ability to provide services to WTAP customers depends on the
12 reimbursements available from DSHS, federal government programs, and customers. Tel West
13 had no opportunity to comment upon the impacts of WAC 388-273-0035 prior to its adoption.
14 Tel West has, however, provided service to 6,200 WTAP customers, as required by the
15 Commission's rules. Unless the emergency order is suspended or otherwise held in abeyance,
16 Tel West will lose in excess of \$200,000 this month and each month that it is required to provide
17 services for which it does not receive full compensation.
18
19

20 Because Tel West cannot continue to provide services at a loss, it respectfully requests
21 waiver of the Commission's rules as identified herein.
22

23 RESPECTFULLY SUBMITTED this 9th day of June, 2003.

24 
25 _____
26 RICHARD A. FINNIGAN, WSBA #6443
27 Attorney for Tel West Communications, LLC

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