August 14, 2001

VIA ELECTRONIC MAIL and
U.S. MAIL

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

Re: Tariff Rulemaking Docket No. U-991301

Dear Ms. Washburn:

INTRODUCTION

Pursuant to the Notice of Opportunity to File Written Comments, dated July 24, 2001, the Washington Telecommunications Ratepayers Association for Cost-based and Equitable Rates ("TRACER"), provides the following comments on the Washington Utilities and Transportation Commission Staff's ("Staff") second discussion draft of the rules in WAC Chapter 480-80.

TRACER appreciates Staff's efforts to propose revisions to the Commission's rules for filing tariffs, pricelists, and contracts and generally agrees with many of the recommended changes. However, TRACER believes that some of the proposed requirements for the filing of pricelists are inconsistent with the underlying statutes or prior Commission decisions and will unnecessarily confuse or disadvantage consumers.

DISCUSSION

Definition of "Cost" for Banded Rates, Price Lists, and Special Contracts

Proposed WAC 480-80-1X5(1)(b), which relates to banded rates, proposed WAC 480-80-2X3(8), which relates to price listed services, and proposed WAC 480-80-3X2(7)(iii), which relates to special contracts for telecommunications companies not classified as competitive, all provide that "[c]osts will be determined under a long run incremental cost analysis, *including the price charged to other telecommunications carriers for any essential function used to provide the service*, or any other commission-approved cost method." (Emphasis added.) TRACER agrees that "cost" should be determined under a long run incremental cost analysis or some other commission-approved cost method. However, imputed prices charged to dependent competitors for essential functions are not "costs" and should not be included within the definition of that term.

The statutes relating to banded rates, price lists for services competitively classified under RCW 80.36.330, and special contracts for services provided by companies that have not been competitively classified, all clearly specify that the appropriate price floor shall be "cost."[1] The reason for specifying "cost" as a price floor was to "[e]nsure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies. . ." RCW 80.36.300(4). Thus, the incumbent carrier is supposed to have the maximum flexibility in lowering prices in response to competition from other carriers, and consumers accordingly receive the lowest prices possible, as long as those prices are not subsidized by noncompetitive services. Stated another way, if the price for a banded rate service, a price listed service, or a special contract covers "cost", there would be no cross-subsidy from noncompetitive services.

The requirement for imputation, on the other hand, derives from the statutory prohibition against subjecting dependent competitors to any undue or unreasonable prejudice or competitive disadvantage in the pricing or access to essential functions. See RCW 80.36.186, which provides in pertinent part:

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[1] RCW 80.36.340, which relates to banded rates, provides that "[t]he minimum rate in the rate band shall cover the *cost* of the service." (Emphasis added.) Similarly, RCW 80.36.330, which relates to services classified as competitive, provides that "[p]rices or rates charged for competitive telecommunications services shall cover their *cost*." (Emphasis added.). And, finally, RCW 80.36.150, which relates to contracts, provides that "[c]ontracts . . .shall cover the *costs* for the service contracted for. . ." (Emphasis added.) Each of these statutes was adopted as part of the Regulatory Flexibility Act, Chapter 450, Laws of 1985.

> Notwithstanding any other provisions of this chapter, no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive service, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejeudice or competitive disadvantage.

A requirement for imputation should be imposed only where the Commission determines, preferably on a case-by-case basis, that it is actually required to avoid undue preference or disadvantage. A generic imputation standard should not be imposed as an automatic requirement for a *price floor*. For example, where an incumbent carrier (I) is competing for the business of a particular customer and wants to offer a price that covers its long run incremental costs, and (ii) its competitor is a facilities-based carrier that is not dependent on the incumbent and, in fact, is able to undercut the prices that the incumbent might charge to dependent competitors in other situations, neither the prohibitions against undue preference or disadvantage nor the prohibition against cross-subsidies would justify restricting the incumbent from bidding for that business. If a final rule were adopted in the form proposed in the second discussion draft, the general imputation requirement would prevent the customer from getting the lowest price possible and preclude the incumbent from getting business that fair competition rules would permit.

In sum, TRACER suggests that the proposed rules be changed to provide: **"Costs will be determined under a long rune incremental cost analysis or any other commission-approved cost method. Prices, rates, or charges shall also cover the price charged to dependent competitors for any essential function used to provide the service where the commission determines that such imputation is necessary to prevent any undue or unreasonable prejudice or competitive disadvantage."**

Price Lists Format and Content

Staff's proposed WAC 480-80-2X3(5) provides that a price list of a utility classified as competitive under RCW 80.36.320 may state the rates, charges, or prices as maximum amounts rather than specific prices. Similarly, WAC 480-80-2X3(6) provides that a price list of a utility offering a service classified as competitive under RCW 80.36.330 may state the rates, charges, or prices as maximum and minimum amounts rather than specific prices. These proposed changes effectively deprive consumers of the ability to look up a price list and determine what the actual prices are that will be charged. They also remove any ability to determine whether undue discrimination is occurring or whether "most favored pricing" commitments are being met. Washington statutes provide that prices of competitive services may be filed in price lists, effective on ten days' notice, instead of tariffs. They contemplate that the prices actually being charged are the ones that are filed. Inherent in the current system is the notion that price lists provide notice to consumers of the effective prices. The proposed rule would dramatically change that situation. In the absence of a change in the underlying statutes, TRACER suggests that there be no change in the notice of actual prices provided by price lists. If carriers are ignoring their own price lists be quoting customers prices that differ from those in the filed price lists, those differing offers should be treated as special contracts.

CONCLUSION

TRACER appreciates the opportunity to comment on the proposed rules. Please contact me if you have any questions about these comments or need additional information.

Very truly yours,

ATER WYNNE LLP

Arthur A. Butler