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August 23, 2006

Via E-mail and FedEx

Carole Washburn, Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-060676 – Rulemaking to Consider Price List Elimination

Dear Ms. Washburn:

Pursuant to the Commission's July 27, 2006 Notice of Opportunity to Submit Written Comments on Proposed Rules in the above-referenced docket, AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, TCG Oregon, Integra Telecom of Washington, Inc., and XO Communications Services, Inc. (collectively "Joint CLECs") provide the following comments.

The Joint CLECs appreciate the Commission's efforts to incorporate the changes to existing rules the Joint CLECs proposed to implement the requirements of Substitute Senate Bill ("SSB") 6473. The Joint CLECs, however, have three primary concerns with the Commission's proposals:¹

- (1) Proposed new WAC 480-120-266 improperly maintains a price list requirement by requiring companies to maintain rates, terms, and conditions at a publicly available location;
- (2) Proposed revisions to WAC 480-120-104 impose greater customer notification burdens on competitively classified companies than previously existed; and

¹ The Joint CLECs simply note that the additional language added to the end of WAC 480-120-263(1) appears to be incomplete, although none of the Joint CLECs is a pay phone service provider.

- (3) CLECs should continue to be able to refuse to provide service if applicants do not comply with applicable rates, terms and conditions.

The Commission should further revise its proposals to remedy these concerns.

Proposed New WAC 480-120-266

Proposed new WAC 480-120-266(2) requires that competitively classified companies "shall make available to any member of the public in at least one location, during regular business hours, information concerning its current rates, terms and conditions for all of its intrastate telecommunications services." Subsection (3) further requires that this information be available on an internet web site. Except for the requirement that the information be filed with the Commission, this requirement is virtually indistinguishable from the existing requirements to maintain and make price lists generally available. *See* WAC 480-80-206.

Such an obligation is fundamentally inconsistent with the legislation eliminating price lists. Revised RCW 80.36.100(5) expressly provides that the obligation in subsections (1) and (3) to "keep open to public inspection at such points as the commission may designate, schedules showing the rates" and "rules or regulations" for services "does not apply to telecommunications companies classified as competitive." No other provision of RCW 80.36, either before or after passage of SSB 6473, grants the Commission authority to impose that obligation on competitively classified companies. Proposed new WAC 480-120-266(2) and (3), therefore, fatally conflicts with Washington statutes.

Commission staff has explained that the intent of these provisions is to mirror the FCC's requirements for deregulated services. Notwithstanding the lack of statutory authority, the FCC's requirements are intended for services that are not provided pursuant to a contract, particularly toll services for residential and small business customers. The Joint CLECs primarily, if not exclusively, provide local services to business customers using individual contracts that contain the applicable rates, terms, and conditions. The proposed new rule thus would require the Joint CLECs to effectively maintain price lists even though they individually negotiate and contract with their customers the rates, terms, and conditions for local service. SSB 6473 was intended to relieve competitively classified companies, as well as the Commission, of such unnecessary regulatory burdens.

The proposed new rule, therefore, should be revised to eliminate the requirement that competitively classified companies effectively maintain a price list at physical and virtual locations in Washington. The revision would apply both in proposed new WAC 480-120-266(2) and (3) and in the corresponding proposed revision to WAC 480-120-161(4)(e), which would require bills include the internet address for rates, terms and conditions for competitively classified companies and services.

If the Commission believes that it has the authority and determines to impose such an obligation, however, the Commission should limit the requirement to a company that chooses to offer services to customers without an individual contract and/or that decides to establish standard rates, terms and conditions to which its individual contracts refer. This limitation should be reflected both in proposed new WAC 480-120-266(2) and (3) and in the proposed revision to WAC 480-120-(4)(e) – there is no reason for bills to refer to rates that are contained in an individual contract, rather than any standard rates maintained on a web site. If the Commission adopts this alternative, moreover, the rule should clearly state that the obligation to make standard rates, terms and conditions “available” can be fully satisfied by posting the information on the company’s website. The vast majority of businesses and residences already have access to the Internet (either high-speed or dial-up access), and there are hundreds of locations throughout the State of Washington that provide public access to the Internet (including public libraries, senior citizen community centers, Internet cafes, and schools). A requirement that standard rates, terms, and conditions be available at a physical location thus is unnecessary, would be unduly burdensome, and should not be adopted.

Proposed Revisions to WAC 480-120-104

The Commission proposes to delete the exemption for services provided under contract by competitively classified companies to the requirement in WAC 480-120-104 that customers receive confirming notice of rates, contact information, and other information when the company initiates or materially changes the customer’s rates or terms of service. The Commission exempted competitive contract services from such notice requirements because the contract provides such notice and governs the relevant rates, terms, and conditions, including any subsequent changes. Customers with contracts obviously do not need a separate notice informing them of the rates and other information that is already included in their contracts. Those circumstances will not change simply because price lists and contracts are no longer filed with the Commission. The proposed revision, therefore, will *increase* the regulatory burden on competitively classified companies – the opposite of the legislative intent in promulgating SSB 6473.

The Commission, therefore, should retain the exemption in WAC 480-120-104 but should revise it to state, “Except for services provided under contract by companies classified as competitive, each company”

WAC 480-120-061

Commission rules currently permit companies to refuse to provide service under certain specified conditions, including “When the applicant has not complied with commission rules, company tariff or price list, and state, county, or municipal codes” WAC 480-120-061(1)(c). The Commission proposes to delete “or price list” from this subsection, but that deletion could be interpreted as not permitting competitively classified companies to refuse to provide service to applicants who do not comply with the rates, terms and conditions under with those companies

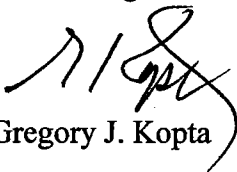
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offer service. The Commission has recognized this issue in the rule governing discontinuing service, replacing "price list" with "rates, terms and conditions of service provided pursuant to competitive classification." WAC 480-120-172 (proposed revisions). The Commission should make the same substitution in WAC 480-120-061(1)(c).

The Joint CLECs appreciate the opportunity to comment on the proposed rulemaking. Please contact me if you have any questions about these comments.

Very truly yours,

Davis Wright Tremaine LLP



Gregory J. Kopta