BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of	)	DOCKET NOS. UT-031459
	)	and UT-031626 (consolidated)
COMCAST PHONE OF	)	
WASHINGTON, LLC	)	
	)	
	)	**AT&T'S MOTION FOR**
	)	**SUMMARY DETERMINATION**
	)	
…….	)	

AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services on behalf of TCG Seattle and TCG Oregon (collectively "AT&T") provide this Motion for Summary Determination in the above-captioned proceedings. In support of its Motion, AT&T states as follows:

INTRODUCTION

1. The Washington Legislature has made its intent clear with respect to regulation of competitive telecommunications companies. It has stated, among other things, that "[c]ompetitive telecommunications companies shall be subject to *minimal* regulation. [and] … [t]he commission may also *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*."[1] "Minimal" regulation, pursuant to the statute, means competitors need not file tariffs and need, at the very least, only keep accounts according to regulation, file financial reports, keep current their price lists and cooperate with the Commission regarding consumer complaints.[2]

[1] RCW 80.36.320(emphasis added).
[2] *Id*.

2. Contrary to the Commission's Legislative mandate, Staff in this proceeding is attempting to impose service quality reporting requirements upon competitors that otherwise applied only to monopolies or incumbents. The Commission's goal, as manifestly clear in its statutory directives, is not to regulate competition, but rather to replace regulation with competition. Unlike Qwest or any other incumbent, Comcast Phone of Washington, LLC ("Comcast") has had to earn, through competition, every single telephone customer it has acquired in this State. In contrast, the large incumbent customer bases were not won through high service quality and customer satisfaction over-time, rather they were awarded by monopoly franchise to the incumbents with guaranteed rates of return. That is why service quality requirements and reporting obligations were created in the first instance—they were a surrogate to competition put in place to ensure service quality where no incentive to provide superior or even good service quality existed. Competitors do not need the same regulatory incentives that Qwest or other incumbents need. Thus, the Washington Legislature recognized that parity of regulation as between incumbents and competitors was not required or even desired.[3]

3. Unfortunately, in this proceeding, ill-conceived parity of regulation is precisely what Staff is attempting. However, Staff has provided absolutely no evidence to demonstrate that its newly developed desire to heavily regulate competitors is in the public interest let alone that it is even necessary. If competitors fail to provide high-quality service, they will lose customers to Qwest. Competitors do not need the Commission's Staff expending—otherwise scarce resources—to look over their

[3] RCW 80.36.300(6)(requiring that the Commission permit "flexible regulation of competitive telecommunications companies and services.").

shoulders in an attempt to regulate service quality. Consequently and in light of the discussion below, AT&T requests that the Commission reject this precedent-setting attempt to impose a regulatory burden upon competitors where such burden is unwarranted and economically undesirable.

DISCUSSION

I. The History Underlying Reporting Requirements and the Commission's Historical Use of Class A & B Distinctions Does Not Support Staff's Interpretation or Efforts to Impose Reporting Requirements Upon Competitors.

4. The Substitute House Bill 1744 ("SHB 1744") related to the statute, RWC 80.04.530, that Staff appears to rely upon for support of its reporting requirements are attached hereto as **Exhibits A and B**[4], respectively**.** Review of Exhibit A, SHB 1744, concerning reporting obligations based upon access line counts, reveals that statute RCW 80.04.530 was enacted, among other things, to streamline regulatory treatment of small incumbents. SHB 1744, on the third page of the attachment, makes two revealing statements; they are:

- "Washington currently has 21 LECs, which are regulated by the Washington Utilities and Transportation Commission (WUTC). The smallest 17 companies each serve less than 2 percent of the switched access (telephone) lines in the state."
- "Telecommunications companies are regulated under 'rate of return' system."

Because competitive local exchange carriers ("CLECs"), as envisioned under the Telecommunications Act of 1996, had not actually entered the market in 1995 and because CLECs have never been "rate of return" regulated, it appears that local exchange carrier or "LEC" in the context of RCW 80.04.530, actually meant what has come to be known as "incumbent" LEC.

[4] Emphasis added by AT&T to some Exhibits.

5. Moreover and as noted by Comcast in its previous filings, rule WAC 480-120-439, at issue here, employs the terms "Class A and Class B" to distinguish between two types of incumbents: Class A, or those incumbents with greater than 2 % of the total state access lines and Class B, or those with fewer than 2 % of the total state access lines. The Commission's history regarding its use of such classifications supports this conclusion. For example, attached hereto as **Exhibit C** are the, then existing account rules, WAC 480-120-031 and WAC 480-120-033, which identify Class A and Class B as referring to carriers identified in the Federal Communications Commission's account rules 47 C.F.R. Part 32 and having access lines in excess of 10,000 for Class A and fewer than 10,000 for Class B. The FCC's rules, currently state in relevant part:

> Sec. 32.11 Classification of Companies
>
> (a) For accounting purposes, companies are divided into classes as follows:
>
> (1) Class A …
> (2) Class B …
>
> * * *
>
> For purposes of this section, the term "company" or "companies" means incumbent local exchange carrier(s) as defined in section 251(h) of the Communications Act … .[5]

These FCC rules have always applied to what is now known as incumbents.

6. Similarly, **Exhibit D** is a December 16, 1999, Notice regarding the draft telecommunications rules in Docket No. UT-990146. The draft rules attached to the Notice employing the use of Class A and B designations, clearly reveal that the Class A and B designations apply to incumbents, not competitors (*see e.g.*, proposed WAC 480-120-031, "Non-competitive companies –

[5] 47 C.F.R. § 32.11.

Accounting" and WAC 480-120-033, "Reporting requirements for competitive companies."). And, like Exhibit D, **Exhibit E,** which is an April 6, 2001 Notice of rulemaking workshop and proposed rule WAC 480-120-X11, also reveals that the Commission's use of the Class A designation relates to incumbents. Further, **Exhibits F, G, H, I and J**, respectively, are:

- Draft Rules dated May 2, 2001, Docket No. UT-990141, showing continued use of the Class A and B designations as consistent with FCC use described above;
- WAC 480-120-544 discussing streamlined procedures for incumbent's rate filings and continued references to the FCC's Class A and B distinctions;
- Proposed 480-120-XXX (or 107) regarding company performance standards that states the section does not apply to competitively classified companies (see, 480-120-(4));
- Pre-proposal Draft, Chapter 480-120 dated February 14, 2002, revealing continued, consistent use of Class A and B designations in relation to incumbents; and
- Draft Part I. General Rules again employing the Class A and B designations in reference to incumbents and specifically excluding competitive carriers from various reporting obligations.

What these Exhibits reveal is a consistent pattern of understanding and use of the Class A and B designations in, not only the industry, but also at the Washington Commission. Class A and B designations describe the division of incumbents

into two categories; they do not reference competitors—nor have they ever referenced competitors. Now, however, Staff wants—without proper notice or rulemaking—to enlarge the definition of Class A and B carriers to include competitors. It wants, as mentioned above, to regulate competition. Because such regulation is unnecessary, costly and contrary to the Legislative mandates of "minimal regulation," AT&T requests that the Commission reject Staff's enlargement of the definition of Class A and B providers.

II. No Economic Evidence Supports Staff's Desired Expansion of Class A and B Designations to Competitors, and Such Expansion is Contrary to the Governor's Executive Order 97-02.

7. Staff did not supply in this proceeding (or any pervious rulemaking) any economic or other evidence that might support its desire to expand the definition of Class A and B providers. That said, there is nothing upon which the Commission may rely to legally, and more importantly, fairly apply Staff's interpretation to competitors. Moreover, Staff's interpretation is contrary to the Governor's Executive Order 97-02, attached hereto as **Exhibit K**. That Order instructs, as follows:

> Upon the effective date of this executive order, each state agency shall begin a review of its rules that have significant effects on businesses, labor, consumers, and the environment. Agencies shall determine if their rules should be (a) retained in their current form, or (b) amended or repealed, if they do not meet the review criteria specified in this executive order.
>
> * * *
>
> The following criteria shall be used for the review of each rule identified for review:

> 1. **Need.** Is the rule necessary to comply with the statutes that authorize it?
>
> *** * ***
>
> 6. **Cost.** Have qualitative and quantitative benefits of the rule been considered in relation to its cost?
>
> * * *
>
> Each agency shall also review its reporting requirements that are applied generally to all businesses or classes of businesses to ensure that they are necessary and consistent with the principles and objectives of this executive order. The goals of the review shall be to achieve reporting requirements that, to the extent possible, are coordinated with other state agencies with similar requirements, are economical and easy to understand, and rely on electronic transfer of information.

Nothing in the Commission's records regarding the rules under consideration here suggest that the Commission ever undertook the review to determine whether Staff's newly developed interpretation of the reporting requirements and Class A and B designations were necessary, consistent with the Governor's Order or economical for either the competitors or the State. Consequently, the Commission should not adopt Staff's view at this point.

CONCLUSION

8. For the foregoing reasons, AT&T respectfully requests that the Commission forgo the opportunity to amend and enlarge its reporting requirements as Staff proposes to do with Comcast in these proceedings.

Submitted this 5th day of December, 2003.

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON

By: _____

Mary B. Tribby
Letty S.D. Friesen
AT&T Law Department
1875 Lawrence Street, Suite 1575
Denver, Colorado 80202
(303) 298-6475