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August 22, 2006

Via E-mail and Overnight Delivery

Carole Washburn, Executive Secretary
Washington Utility & 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 File Written Comments in the above-referenced docket, United Telephone Company of the Northwest dba Embarq ("Embarq") provides the following comments.

Embarq recommends that the Commission either eliminate the proposed WAC 480-120-266 (b) and (c), or alternatively, substitute the wording from RCW 80.36.330(4). Under that statute, the Commission may "investigate prices for competitive telecommunications services upon complaint." The telecommunications company bears the burden of proving that the prices charged cover costs, and are fair, just and reasonable. The law does not specifically address ambiguity, nor does it state that there is a rebuttable presumption that the ambiguity should be construed in favor of the customer. The Commission by setting forth a standard that could be construed to be different from the one in the statute actually creates an ambiguity. The term "ambiguous" is itself ambiguous and subjective, and thus open to interpretation. In order to successfully compete in the marketplace, companies must ensure that their customers fully understand the product offerings and receive no unpleasant surprises after purchase. Yet no matter how hard a company attempts to make its offerings clear, it cannot ensure that there won't be a few customers who misunderstand the offering, and find it "ambiguous."

Embarq further recommends removing Sections 2 and 3 of the same proposed rule. These sections clearly defeat the purpose of the legislation. Rather than eliminate price lists for competitive services, Section 2 and 3 would require companies to maintain price lists. The legislature intended in RCW 80.36.338 that companies will make available information regarding prices and price changes only at the time of withdrawal of a price list, not forevermore. The legislature explained that "if any of the rates, terms, and conditions do change *upon* withdrawal of the price list, the company must provide,"

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Carole Washburn

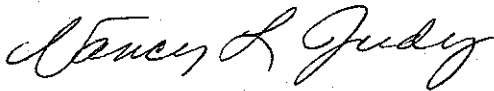
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customers with an opportunity to accept the new terms. And it further limited to thirty (30) days the opportunity to cancel service if a customer rejected the new terms. Had the legislature intended the statute to require companies to maintain a price list in some form other than in a file at the commission, i.e. at its office or on its website, the notice and opportunity to cancel service it provided in the statute would be rendered moot and irrelevant. Principles of administrative law are clear that a statute must be read to avoid "strained or absurd results." See *Strain v. W. Travel, Inc.*, 117 Wn. App. 251 (2003), citing *Herrington v. David D. Hawthorne, CPA, P.S.*, 111 Wn. App. 824, 837, 47 P.3d 567 (2002), review denied, 148 Wn.2d 1025 (2003). Requiring companies to continue to maintain a *de facto* price list at its office and on its website is clearly a strained and illogical application of RCW 80.36.338.

Embarq appreciates the opportunity to comment on the proposed rulemaking, and thanks the Commission for its consideration of our recommendations.

Sincerely,

A handwritten signature in cursive script that reads "Nancy L. Judy". The signature is written in dark ink and is positioned above the printed name.

Nancy L. Judy