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

Re: Telecommunications Company Rulemaking, Docket No. UT-990146

Dear Ms. Washburn:

Pursuant to the Notice of Issuance of Questionnaire (April 13, 2001) on the compliance costs for proposed rules WAC 480-120-XXX, XXY, XO8, and 131 ("Proposed Rules") in the above-referenced docket, Advanced TelCom Group, Inc., AT&T Communications of the Pacific Northwest, Inc., Electric Lightwave, Inc., Focal Communications Corporation of Washington, Pac-West Telecomm, Inc, TCG Seattle, TCG Oregon, and XO Washington, Inc., (collectively "Joint CLECs"), provide the following comments. The Joint CLECs are jointly submitting a response to the Questionnaire because the relative economic impact will be the same for all of them. Rather than use company-specific data, therefore, the Joint CLECs rely on data previously submitted to the Commission and to Commission Staff to demonstrate that the Proposed Rules – specifically WAC 480-120-X08 – would have a severely adverse economic impact on any CLEC that attempts to serve customers using facilities obtained from incumbent local exchange companies ("ILECs").

(1) Company Identification.

Each of the Joint CLECs is a competing local exchange company ("CLEC") that is offering local exchange service in Washington. For purposes of the information contained in these comments, I will be the contact person for these companies. None of the Joint CLECs qualify as a "small business," and these comments do not address any small business impact of the Proposed Rules.

(2) Proposed Rules' Effect on Sales and Revenue.

The economic effect of Proposed Rule WAC 480-120-X08 would be severe and would cause the Joint CLECs to lose a significant amount of revenue and/or sales whenever they must rely on facilities provided by ILECs to provide service to customers. Glenn Blackmon testified on behalf of Commission Staff in Qwest's recent petition for competitive classification of business services, Docket No. UT-000883, that Qwest takes substantially longer to provision unbundled loops to CLECs than to use those loops itself to provide retail service. A CLEC that must rely on an unbundled loop from Qwest thus cannot match the interval in which Qwest can provide a competing service. If the CLEC nevertheless gives the customer a due date that is competitive, the CLEC will be compelled to pay credits for failure to meet that due date. If the CLEC attempts to give the customer a due date based on when the facility is likely to be provisioned by the ILEC, the CLEC risks losing the customer entirely or guessing wrong and still paying the credits.

The Proposed Rule requires credits of the nonrecurring charge plus one month's recurring charge (including subscriber line charge) for each missed due date and for each week (or partial week) thereafter. Based on Qwest's rates for basic business exchange service, the CLEC would be required to pay credits to customers of over $80 (approximately $50 NRC, $27 recurring, and $7 subscriber line charge) for each unbundled loop it obtains from Qwest. A credit of that magnitude represents almost 20% of the revenues the CLEC otherwise would have generated from the nonrecurring, recurring and subscriber line charges during the first year. With few exceptions, unbundled loops likely would not be a financially viable means for CLECs to provide local service under such circumstances, resulting in lost sales to CLECs that have not constructed facilities to requesting customer locations, as well as far less choice of local service provider for consumers.

Nor are these circumstances limited to unbundled two-wire loops. Kaylene Anderson testified on behalf of XO Washington, Inc., in the recent Qwest competitive classification proceeding that 68% of XO's orders for high capacity circuits are held, *i.e.*, not provisioned when due, and remain held for an average of 18 days. If those facilities are used to provide basic business service, the CLEC would be responsible for multiple credits for each facility. For example, if the CLEC were to use a DS-1 circuit obtained from Qwest to provide 10 basic business lines and Qwest delayed provisioning that circuit for 18 days, the CLEC would be responsible for credits totaling over $1800 (10 NRCs and 40 recurring charge credits – ten for the original missed due date plus thirty more for the 2 and one-half weeks thereafter) or 40% of the revenues the CLEC otherwise would have generated during the first year of providing the service. Again, the result would be not just a substantial decrease in revenue but the likelihood that CLECs simply could not afford to serve customers that are not in locations to which the CLEC has constructed its own facilities.[1]

[1] The total amounts of retail service quality credits obviously will depend on the number of facilities CLECs order from the ILECs and the number of those orders that are not provisioned on the due dates. That number may vary if

The Proposed Rule contains no provision that would enable CLECs to recover these lost revenues from the ILECs that caused the revenue loss. The Commission has consistently declined to impose wholesale service quality guarantees or remedies either in arbitrated interconnection agreements or in rules,[2] and the ILECs steadfastly refuse to provide such remedies voluntarily. Qwest agreed to some remedies for nonperformance in a settlement agreement with Staff in the merger case, Docket No. UT-991358, but those remedies fall far short of compensating CLECs for the credits in the Proposed Rule. CLECs' remedies under the merger settlement agreement apply only to orders that were forecasted and are limited to a credit for the nonrecurring charge, and credits of one month's recurring charge apply only after 15 consecutive business days beyond the due date.

In the DS-1 example above, therefore, Qwest would have provided the CLEC a credit only if the CLEC had forecasted the order for that circuit and would be limited to the nonrecurring charge – no recurring charge credit would apply because 18 calendar days is less than 15 business days. Based on Qwest's proposed basic nonrecurring charge for a DS-1 loop in Docket No. UT-003013 of approximately $150, the CLEC would suffer an uncompensated revenue loss of over $1650.

Unless ILEC performance dramatically improves or the Commission holds the ILECs responsible for retail customer credits CLECs must pay when the ILECs are at fault, the Proposed Rule will impose on the Joint CLECs substantial revenue losses and/or lost sales for customers or potential customers that are in locations to which the Joint CLECs have not constructed their own facilities.

The Joint CLECs note, however, that this adverse economic impact could be mitigated by limiting the applicability of the Proposed Rule to the first five lines of basic business or residential service provided to customers who do not currently take service from another provider. Most customers who request service from CLECs are sophisticated business customers who seek to replace service they currently obtain from the incumbent with services from the CLEC. Exempting such service provisioning from retail service quality credits would reduce CLECs' exposure to revenue losses if the customer is not without service while the incumbent provides the necessary facilities to enable the CLEC to serve that customer. Such a limitation would be particularly appropriate if the purpose of the Proposed Rules is to encourage companies to provide basic network connectivity so that customers have telephone service at least by the

the Proposed Rules are enacted without revision due to a reduction in orders as a result of the increased economic risk posed by the Proposed Rules. Historic held order levels, moreover, are difficult to track for individual CLECs and thus the Joint CLECs recommend that the Commission adopt comprehensive wholesale held order reporting requirements for Qwest and Verizon that would enable competitors and the Commission to more accurately and easily identify and track CLEC orders of ILEC facilities.

[2] The sole exception is WAC 480-120-550, the Commission's collocation rule, which requires the ILECs to credit 10% of the nonrecurring charges for collocation for each 10 days that collocation provisioning is delayed beyond the due date.

date they expect service to be provided. Similarly, the adverse economic impact would be reduced if the rule required ILECs to permit CLECs to use the same facilities that the ILEC currently is using to provide service to the customer, rather than requiring that the CLEC order and have the ILEC install new facilities. The Texas Commission, for example, has adopted just such a rule.

(3) Proposed Rule's Effect on Expenses.

The expenses required to revise price lists and to undertake similar administrative action to implement the requirements of the Proposed Rules, to the extent necessary, would not be significant.

The Joint CLECs appreciate the opportunity to comment on the economic impact of the Proposed Rules. Please contact me if you have any questions about these comments or need additional information.

Very truly yours,

Davis Wright Tremaine LLP

Gregory J. Kopta

cc: Rex Knowles
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