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August 23, 2006

VIA ELECTRONIC MAIL

Ms. Carole J. Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive SW
P.O. Box 47250
Olympia, WA 98504

Re: Docket No. UT-060676; Comments on Draft Rules

Dear Ms. Washburn:

Pursuant to the Commission's July 27, 2006 Notice of Opportunity to Comment ("Notice"), Verizon Northwest Inc., TTI National, Inc., MCI Communications Services, Inc. d/b/a Verizon Business Services and MCImetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services (collectively "Verizon") provide the following comments on the draft rules circulated with the Notice ("Draft Rules").

Summary

In some cases, complying with Senate Bill 6473 requires no more than deleting "price list" from the Commission's rules. In other cases, however, such deletions could have unintended consequences -- both during the transition period for which the bill provides and thereafter. Verizon proposes rule language to address these issues. Verizon also: (i) explains that one of the Draft Rules should not be adopted because it includes provisions that are unnecessary and inconsistent with the Senate Bill and (ii) recommends minor language changes that should be added to the Draft Rules for clarification purposes.

Accommodating the Transition Period

As noted in the comments filed by the "Joint CLECs" on June 30, 2006, there will be a transition period during which some companies will have withdrawn their price lists while other companies continue to utilize filed price lists. This period may last until June 30, 2007 or, pursuant to a waiver, until June 30, 2008. Thus, the Commission's rules must not prematurely delete

references to "price lists" but also must accommodate the fact that certain price lists are withdrawn.[1]

The Draft Rules, which are proposed to become effective in October, 2006, would delete all references to "price lists." Thus, there would be no rules applicable to price lists that are in effect during the remainder of the transition period.

One way to resolve the problem is to not delete "price lists" at this time and to instead include the following provision in Sections WAC 480-80-010, 480-120-011 and 480-121-011:

> Any reference to "price lists" in this chapter refers to price lists that were in effect on June 8, 2006 and that remain in effect pursuant to 80.36 RCW.[2]

In the future, after the last price lists are withdrawn, the Commission could make housekeeping changes to remove "price lists."

In order to accommodate the ongoing withdrawal of price lists, Verizon also makes recommendations below for those rules that should acknowledge the replacement of those price lists with customer contracts.

Discussion of Specific Rules

CHAPTER 480-80

WAC 480-80-030 Definitions

This Draft Rule does not address a possibly misleading reference to "contracts" in WAC 480-80-010 and -031. Because they elsewhere would (properly) remove the requirement of contract filings by competitively classified companies ("competitive companies") and for the competitively classified services of Incumbent Local Exchange Carriers ("ILECs"), [3] the Draft Rules must clarify that the "contracts" referred to in this Chapter are only ILEC contracts for non-competitively classified services. For example, the following provision could be added to WAC 480-80-030:

> As used in Chapter 480-80, "**contract**" does not include contracts for companies or services classified as competitive under RCW 80.36.320 or -.330.

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[1] Verizon notes from the Commission's recent Open Meeting Agenda that some companies are already withdrawing their price lists, e.g., Covad (UT-061216), Shared Communications (UT-061221), Eschelon (UT-061222), Advanced Telecom (UT-061223), TeleUno (UT-061269).

[2] Because Verizon recommends that *all* references to price lists in the Draft Rules should be retained in conjunction with this proposed sentence, it does not undertake in each section below to repeat that recommendation.

[3] In these comments, the term "competitive services" refers to competitive companies' services and to ILECs' competitively classified services.

CHAPTER 480-120

WAC 480-120-021 Definitions

As discussed below, simply deleting "price lists" from some rules may have unintended consequences for competitively classified companies and ILECs' competitively classified services. This may be remedied by the use of a new defined term, which would be set forth in WAC 480-120-021:

> **'Competitive contract'** means the rates, terms and conditions of companies or services classified as competitive under RCW 80.36.320 or -.330, including preconditions for the provision of service.

The Draft Rules acknowledge this issue in some (but not all) cases by replacing "price list" with phrases such as "rates, terms and conditions of service provided pursuant to competitive classification." The more succinct "competitive contract" should be used.

Thus, in the rules "price list" would continue to apply to competitive services until their price list is withdrawn, and "competitive contract" would apply where prices lists have been withdrawn, as well as to new competitive services.

The first place "competitive contract" should be added to the Draft Rules is in the definition of "Order date" in 480-120-021. It should be inserted between "tariffs" and "price lists" so that the rule reads, "… in compliance with tariffs, competitive contracts, price lists…" If this clarification were not added, the substantive rules that use "order date" might be read to – improperly -- deprive competitive service providers of the benefit of preconditions to providing service, which could negatively impact them under the Commission's rules on the timely processing of service orders.

WAC 480-120-061 Refusing service

For the reasons discussed above, the Draft Rules' deletion of "price lists" from subsection (1)(c) could be read to require formerly price listed services to be provisioned even though an applicant does not comply with service conditions. Thus, the phrase "or competitive contract" should be added between the word "tariff" and the phrase "or price list," so that the rule reads, "… company tariff, competitive contract or price list…"

WAC 480-120-103 Application for service

For the same reasons discussed regarding WAC 480-120-061, this Draft Rule should be modified by inserting the phrase "or competitive contract" between the word "tariff" and the phrase "or price list," so that the rule reads, "… has met all tariff, competitive contract or price list requirements …."

WAC 480-120-104 Information to consumers

Competitive services provided under contract are currently exempt from the "information to customer" requirements set forth in WAC 480-120-104. The proposed deletion of "price lists" from WAC 480-120-104(1) could have the unintended consequence of removing this exemption.

Therefore, the phrase "Except for services provided under competitive contract" should replace the proposed deletion in the first sentence of subsection (1) of WAC 480-120-104 in the Draft Rules.

The same change should be made at the beginning of subsection (2) of WAC 480-120-104 to make clear that a confirming notice or welcome letter is not required for competitive services. The customers of such services will receive a copy of the competitive contract, and of any subsequent amendment, so there is no need for them to also receive a confirming notice or welcome letter.

WAC 480-120-122 Establishing service

Instead of using the phrase set forth in this section of the Draft Rules, it would be more streamlined to use "competitive contract," as discussed and defined above.

WAC 480-120-161 Form of bills

The proposed additions to this section of the Draft Rules are inappropriate. They seem to assume that companies will simply withdraw their price lists from the Commission, post them on a website, and continue to use them to create contracts with their customers. That may or may not be the case. In any event, the new law being implemented here removes from Commission jurisdiction issues of how contracts for competitive services are formed, including whether or how such information might be included in customer bills or on websites.

Termination of the use of price lists means that competitive services will be governed by contract, and, as such, will be subject to applicable contract law, including law governing contract formation. Using an Internet-posted standard contract is only one possible means of forming competitive contracts, but the Draft Rule would purport to mandate the use of that method. The Commission is not authorized to impose such a requirement. Moreover, such a mandate is unnecessary. Contract law will provide sufficient safeguards to ensure that customers receive proper notification of the applicable rates, terms and conditions under competitive contracts.

WAC 480-120-171 Discontinuing service – Customer requested

As discussed above, "price lists" should be retained. "Competitive contract" need not be added here so long as the Commission would interpret the phrase "contract commitment" to apply to both competitive contracts and special contracts for services not classified as competitive (i.e., contracts subject to WAC 480-80-142).

WAC 480-120-172 Discontinuing service – Company initiated

Instead of using the phrase set forth in this section of the Draft Rules, it would be more streamlined to use "competitive contract," as discussed and defined above.

WAC 480-120-255 Information delivery services

Instead of using the phrase set forth in this section of the Draft Rules, it would be more streamlined to use "competitive contract," as discussed and defined above.

WAC 480-120-263 Pay phone service providers (PSPs)

The sentence proposed to be added to this section of the Draft Rules is incomplete. The existing rule should be revised to read as follows:

> A local exchange company (LEC) within the state of Washington must allow local pay phone services providers (PSPs) to connect pay phones to its network.

WAC 480-120-264 Prepaid calling services

Instead of using the phrase set forth in subsection (b) of this section of the Draft Rules, it would be more streamlined to use "competitive contract," as discussed and defined above.

WAC 480-120-266 Rates, terms and conditions for telecommunications services provided pursuant to competitive classification

This proposed new section should not be adopted, as each of its subsections is unnecessary or inappropriate.

Draft subsection (1) and its subparts are unnecessary and beyond the Commission's authority. The statement in the opening sentence that competitive services are governed by applicable laws, rules and orders is unnecessary, as – by definition – any "applicable" law, rule or order will "apply." Subpart (a) of subsection (1) is also unnecessary, as competitive contracts will not require Commission review or approval. Subpart (b) of subsection (1) merely attempts to restate the Commission's residual authority over competitive services, and thus is also unnecessary. Subpart (c) of subsection (1) appears to be an attempt to summarize contract law as to the interpretation of ambiguous language in a competitive contract. It does not appear to be a sufficient or correct summary, but, even if the Commission retains the authority to adjudicate competitive contract interpretation disputes, it is contract law that will apply – not any formulation set forth in a Commission rule.

For the reasons discussed with regard to draft WAC 480-120-161, subsections (2) and (3) of this Draft Rule are beyond the Commission's authority and, in any case, are unnecessary.

Subsection (4) is a restatement of the requirements of RCW 30.36.330(3). It is unnecessary and should not be adopted, as the statute speaks for itself.

WAC 480-120-436 Responsibility for drop facilities etc.

"Competitive contract" should be used instead of "competitive classification."

WAC 480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies

This section of the Draft Rules includes a web posting mandate that is beyond the Commission's authority, as discussed above. Verizon recommends not adopting the draft second sentence, and adding the following opening clause to the first sentence:

> Except for services provided pursuant to competitive contracts,

WAC 480-120-540 Terminating access charges

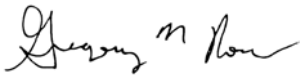
Pursuant to the discussion of draft WAC 480-120-266, above, that Draft Rule should not be cited here. Instead of the draft new phrase in subsection (6), the rule should be amended to read as follows:

> … with this rule may increase or restructure its originating access charges to compensate for the required terminating access rate reductions.

The existing last sentence should be deleted.

Thank you for this opportunity to comment.

Sincerely,



Gregory M. Romano

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