BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rule-Making Proceeding Related to Telecommunications Companies – Chapter 480-120 WAC	DOCKET NO. UT-990146

Comments of
Public Counsel
Attorney General of Washington

May 22, 2001

Public Counsel files these comments in response to the Commission's May 2, 2001 Notice of Opportunity to File Written Comments. We look forward to working with Commission Staff and all stakeholders during the entirety of this process and at the upcoming workshops scheduled for June 5, 6, and 7, 2001.

In addition to the following comments, Public Counsel incorporates by reference its previous comments filed with the Secretary of the Commission on September 24, 1999 and February 2, 2000.

Underlying Public Counsel's comments is a recognition that, while competition may at some point develop for local telephone service for residential and small business customers, most consumers still have only one provider to choose from, the monopoly incumbent. There is, therefore, no marketplace to provide protections in place of those now provided in the Commission's rules. In addition, as the 21st century begins, it is more apparent than ever that

telecommunications services are as essential as natural gas or electrical utility service, and customer protections should recognize that fact.

WAC 480-120-041 Availability of information.

Public Counsel supports regulatory requirements that provide better information to customers in Washington regarding the services provided to them by telecommunication companies and regarding all remedies available for inadequate service. In general we believe the proposed draft rule represents a significant enhancement of the current rule. As outlined below however, we do have some specific recommendations to further enhance and refine this rule.

Public Counsel recommends that section (3) of the rule should make reference to applicants as well as customers. In addition, section (3) should also require notice to applicants and customers that basic service may not be terminated for non-payment of other services, as well notification of the existence of Washington Telephone Assistance Program (WTAP). Public Counsel also believes that section (3) should require companies to inform applicants and customers about the service quality guarantees established in WAC 480-120-X08, including the $50 missed appointment credit and credits for the LECs failure to install or activate service by the commitment date. Finally, we also recommend that companies inform applicants and customers about the company's procedure for handling repairs and service interruptions. This information should include the remedies and credits available to a customer for out of service conditions, as set forth in the proposed rule WAC 480-120-X34.

Public Counsel has a few concerns and questions with section (4) of this proposed rule. First, we are concerned that subsection (4)(c) is overly broad, and appears to create an irrebutable presumption that charges not disputed within 21 days would automatically be considered "correct and binding." Our concern is that the rule should allow for some flexibility,

to ensure that customers can raise legitimate complaints when they are unable to dispute new charges within the time frame established by the rule. Second, we request some clarification from Commission staff regarding which notice requirements would apply if an existing customer orders an additional service, such as voice mail—those set forth in section (3) or those in section (4)? Third, we recommend that discussion of this rule at the upcoming workshop include some discussion as to how section (4) of the proposed draft rule would interplay with notice requirements for tariff changes (480-120-043), and notice requirements associated with rate changes for services offered under a price list.

Suggested language

In section (3) insert after "Each company must provide the" the phrase "applicant or"

In subsection (3)(b) after "…the installation or activation date" insert "provided by the Company consistent with WAC 480-120-X08"

In the second sentence of subsection (3)(b) strike "the current rate, including the minimum and maximum at which the customer's rate may be shifted" and after "If the service is provided under a banded rate schedule" insert "… , notice must provide clear and concise information regarding the current rate, the minimum and maximum rates, and a brief statement describing when and how customers would be notified if the Company increases rates within the prescribed band."

(3)(e) clear and concise notice of the service quality credits customers will receive, should the Company fail to meet the due date for installation or activation of service, pursuant to WAC 480-120-X08.

(3)(f) a brief statement describing the $50 missed appointment credit, as set forth in WAC 480-120-X08.

(3)(g) information on how the company will handle repair requests and service interruptions including the remedies available to the customer for untimely service by the company and the pro-rata credits awarded to customers as set forth in WAC 480-120-X34.

(3)(h) that a customer's basic service may not be terminated for non-payment of other services provided by the company.

(3)(i) of the existence of the Washington Telephone Assistance Program including contact information at the company and the department of social and health services.

Replace the existing language of subsection (4)(a) with: "Contact information for the appropriate business office, including a toll-free telephone number and business office hours, that the customer can contact if they have questions."

Delete existing subsection (4)(c) or replace the second sentence with: "If protest is not received within the specified time frame, the customer bears the burden of proof of showing any charges made by the company are incorrect." Also add the following sentence to the end of this subsection: "Nothing in this rule constitutes a waiver of customer rights under RCW 80.04.110"

WAC 480-120-056 Establishment of credit – Residential services.

Public Counsel objects to the provision in section (2) of the proposed rule that would allow LECs to collect a deposit from customers who have received two or more delinquency notices for basic local service. This requirement is more stringent than the existing rule and we believe it is unnecessary. We also note that section (2) should include a reference to sections (6) and (7) of the rule, which establish provisions for the amount of the deposit and deposit payment arrangements.

Public Counsel has some concern with section (3) of the proposed draft rule regarding deposit requirements for local ancillary services. We are not aware of a definition of "reasonable

means" by which an applicant or customer may establish credit. Thus, whereas subsections (3)(a) through (3)(e) of the existing rule establish specific means by which an applicant or customer can establish credit, the proposed draft rule appears to give LECs sole discretion to determine whether an applicant or customer has demonstrated satisfactory credit. We therefore support retention of subsections (3)(a) through (3)(e) of the existing rule, as they pertain to deposits for local ancillary services.

We also recommend replacing section (5) with the language on post-service deposits found in subsection (4)(b) of the current rule.

Finally, Public Counsel has significant concern with language in section (13) of the proposed rule, concerning refunding deposits. Our concern is with the following provision in the proposed rule: "If the customer is terminating a particular class of service for which a deposit is being held and is reestablishing the same class of service with another company who is authorized by the commission to collect deposits, the company is not required to refund the deposit." If a customer is terminating service from one company and reestablishing the same class of service with another company, any deposit that should be refunded to the customer pursuant to subsection (11)(b) of the current rule should flow directly to the customer. If the company with which the customer is reestablishing service is authorized by the commission to collect a deposit, that company may require a deposit from the customer, consistent with the provisions of this rule. We therefore support retention of the language in subsection (11)(b) of the existing rule.

Suggested language

In section (2) strike the phrase "has received two or more delinquency notices for basic local service during the last twelve-month period with that company or another company".

In section (3) strike the phrase "by reasonable means" and insert existing language from subsections (3)(a) through (3)(e) of the existing rule.

In sections (3) and (4), replace the phrase "pay a deposit consistent with (5) and (6)" with "pay a deposit consistent with (6) and (7)."

Replace the language in section (5) with the existing language in subsection (4)(b) of the current rule.

In section (13) strike the sentence that begins "If the customer is terminating a particular class of service for which a deposit is being held…" and replace with subsection (11)(b) of the current rule.

WAC 480-120-X21 Establishment of credit – Business services.

Public Counsel believes that business customers that are required to pay a deposit for ancillary local exchange services should have the option of extended payment.

Public Counsel has the same concern with section (10) of this draft proposed rule as with section (13) of WAC 480-120-056. For the same reasons cited above, we support retention of language in subsection (11)(b) of the current rule.

Suggested language

In subsection (5)(c) replace the sentence that begins "A company is not required to allow extended payment …" with the sentence "The customer may pay fifty percent of the deposit before the installation or continuation of service, with the remaining amount payable in equal amounts over the following two months."

In section (10) strike the sentence that begins "If the customer is terminating a particular class of service for which a deposit is being held…" and replace with subsection (11)(b) of the current rule.

WAC 480-120-061 Refusal of service.

Telecommunication services are essential services that should be refused only under the most extreme circumstances. Public Counsel strongly objects to language in section (4) of the proposed rule. Specifically, we object to the following provision: "A company may deny service at an address where a former customer is known to reside with an overdue, unpaid prior obligation to the same company for the same class of service at that address until the obligation is paid…." This provision is contrary to the public policy goals of providing universal service and undermines the ILEC's obligation to serve those customers within its exchange. Requiring a deposit of a customer based upon that customer's co-habitation with a former customer who allegedly owes a past due bill to the company arguably infringes upon the applicant's right to contract and to equal protection under the law. Absent <u>objective</u> evidence of fraud, there is no rational basis for the company (or the commission) to <u>assume</u> fraud based solely upon co-habitation. At a minimum, we suggest that the LEC has the burden of proving that a fraudulent act is being committed, and suggest language proposed by Commission staff for subsection (4) of WAC 480-100-123 in the energy consumer rulemaking, proposed for adoption June 27, 2001.

<u>Suggested language</u>

In section (4) Strike the third sentence, which begins "A company may deny service at an address where a former customer is known to reside…" or replace with "<u>The company may not refuse to provide service to a residential applicant or residential customer because there are outstanding amounts due from a prior customer at the same premises, unless the company can determine, based on objective evidence, that a fraudulent act is being committed, such that the applicant or customer is acting on behalf of the prior customer with the intent to avoid payment.</u>"

WAC 480-120-081 Discontinuance of service.

Public Counsel supports retaining the notice provisions currently at subsection (5)(b) prior to any disconnection of service.

In the proposed section (5) Public Counsel supports retaining the existing six month time period concerning the validity of the medical certification, as opposed to the proposed sixty days. This minimizes the burden on the customer as well as the transactional costs to the company.

Public Counsel recommends adding to section (6) notice of the WTAP program as well as the WUTC's consumer affairs section and its "1-800" complaint line.

The third sentence of Section (8) of the proposed rule, which begins "During a dispute a company may, upon authorization of the commission, disconnect service…" should include a reference to sections (2) and (3) of the proposed rule.

Suggested language

In section (6) insert the following sentence: "Information regarding the Washington Telephone Assistance Program as well as information regarding the Commission's Consumer Affairs section including relevant contact information."

In the third sentence of section (8), which begins "During a dispute a company may, upon authorization of the commission, disconnect service…" after "disconnect service" insert the phrase "pursuant to sections (2) and (3) of this rule".

WAC 480-120-X32 Resumption of service based on WTAP or enhanced tribal lifeline eligibility.

Public Counsel strongly supports this proposed new rule.

WAC 480-120-087 Telephone solicitation.

Public Counsel believes that the notice provision of subsection (2)(c) of the existing rule should be retained, which requires telecommunications companies to inform their customers that the Attorney General's Office is authorized to enforce this law. Section (2) of the proposed rule merely states that the Attorney General's office is authorized to enforce this law—it does not require companies to notify their customers about complaint and enforcement procedures. We believe that customers must be informed of these rights and remedies, and that such notice is required by section (7) of RCW 80.36.390, which states in relevant part: "The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section."

Prior to the workshops scheduled for June 5, 6, and 7, Public Counsel will obtain appropriate contact information for the Consumer Protection Division of the Attorney General's Office, to ensure any notice provisions of this rule include accurate contact information.

Suggested language

In section (2) strike "Fair Practices" and replace with "Consumer Protection."

In section (2) insert a notice provision consistent with section (2)(c) of the current rule.

WAC 480-120-088 Automatic dialing-announcing devices.

Public Counsel does not object to the reorganization of this rule so long as the existing protections are maintained in their entirety. Public Counsel does not support the unrestricted and unregulated use of ADADs by noncommercial entities.

WAC 480-120-101 Complaints and disputes.

Public Counsel supports a uniform requirement that customers be fully informed of their rights and remedies as soon as possible. Public Counsel recommends that at the time a customer

is informed of their right to speak with a supervisor they should also be informed of their right to file a complaint with the commission.

Suggested language

Replace subsection (1)(e) with "the company must explain the customer's right to escalate the complaint to a supervisor if dissatisfied with the initial contact with the company representative and the customer's right to file a complaint with the commission if still dissatisfied after speaking to a supervisor."

WAC 480-120-106 Form of bills.

Public Counsel suggests that the language of the proposed section (2) be modified so that it is clear that the burden is on the company to provide the customer the same amount of time to pay the bill as the company delayed in sending it out. The burden should not be on the customer to request this when it was the company's error initially.

Public Counsel recommends that subsection (8) include a reference to the WUTC Consumer Affairs section and its 1-800 number.

Suggested language

In paragraph two of section (2) after the phrase "required to pay delayed charges," delete the phrase "when requested by the customer."

WAC 480-120-X34 Pro-rata credits.

Public Counsel strongly supports this proposed rule.

WAC 480-120-144 Use of privacy listings for telephone solicitation.

Public Counsel supports requiring that the company obtain the affirmative, written acceptance from the customer that such solicitations are acceptable.

CONCLUSION

In general, Public Counsel supports the revisions proposed by Staff. The draft rules contain a number of worthwhile new provisions and at the same time, preserve valuable customer protections that have proven necessary and effective over time.