**BEFORE THE**

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

| | | |
|---|---|---|
| **In re the Matter of Revising Rules – Telecommunications Companies – Chapter 480-120 WAC** | ) ) ) ) ) | **Docket No. UT - 990146** |

**JOINT SUPPLEMENTAL COMMENTS OF**

**ADVANCED TELCOM GROUP, INC.**

**AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC.**

**CENTURYTEL OF WASHINGTON**

**SPRINT COMMUNICATIONS COMPANY**

**TDS TELECOM**

**VERIZON NORTHWEST INC.**

**WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION**

**WORLDCOM, INC.**

**XO WASHINGTON, INC.**

**ON STAFF DRAFT RULES 480-120-XXX, -XXY, -520, -051, -X08 AND –X34**

**June 26, 2001**

# I. INTRODUCTION

**The Commission should not proceed on proposals to change its rules on appointments and installation and repair deadlines.**

Advanced Telcom Group, Inc.; AT&T Communications of the Pacific Northwest, Inc.; CenturyTel Of Washington; Sprint Communications Company, on behalf of United Telephone Company of the Northwest and Sprint Communications Company L.P.; TDS Telecom; Verizon Northwest Inc.; the Washington Independent Telephone Association[1]; WorldCom, Inc., on behalf of its regulated subsidiaries; and XO Washington, Inc. ("the companies") urge the Commission to make a fresh start on considering whether there is any need to change its rules on making appointments with customers and on the deadlines imposed for service installation and repair. Several draft rules have been noticed in this docket that would impose significant new costs and operational complexities and would be counter-productive for good customer service. These rules would have a multi-million dollar negative cost impact on the companies.

The draft rules in question are as follows:

WAC 480-120-XXX and - XXY (installation deadlines),

WAC 480-120-520[2] (service restoral deadlines),

WAC 480-120-051 (appointment scheduling),

WAC 480-120-X08[3] and -X34 (discounts and sanctions)[4].

---

[1] The Washington Independent Telephone Association ("WITA") consists of the following local exchange companies: CenturyTel, CenturyTel of Washington, Ellensburg Telephone, Hat Island Telephone, Hood Canal Communications, Inland Telephone Company, Kalama Telephone, Pend Oreille Telephone Company, Pioneer Telephone Company, Rainier Group, Sprint, TDS-Asotin, TDS-LaCenter, TDS-Salkum, Tenino Telephone Company, The Toledo Telephone Company, Inc., Verizon, Wahkiakum West Telephone, Whidbey Telephone Company and YCOM Networks, Inc.

[2] A definition proposed for WAC 480-120-021 is also involved.

[3] A portion of WAC 480-120-051 is also involved.

[4] The proposed changes to WAC 480-120-535 (Service Quality Reports) should be examined, as well. The companies have significant concerns with a number of the proposals for that rule, but they do not address them in these comments, as the underlying standards should be resolved before reporting requirements are considered.

It has become obvious that the companies and the Commission have put the cart before the horse. The Commission has heard numerous comments from many of the companies on the lack of an identified need for these proposed rules and on the significant costs they would impose. Before draft rules for such major regulatory changes were issued, the Commission and the companies should have conferred, so that the companies gained a full appreciation of the Commission's concerns and objectives, and the Commission gained a thorough understanding of the companies' operations related to these topics. Then all parties could have made informed decisions on what changes in the Commission's rules are warranted, if any. It is not too late; we should undertake that approach now.

The Commissioners and the Commission Staff have assured the companies that these draft rules were not prompted by any service quality crisis or increase in customer complaints. On the contrary, they have said that service quality is good, and they do not intend to increase the companies' burdens and costs. Thus, there is every reason to take the most constructive approach. The draft rules should be taken off the table at the moment, and the Commission and the companies should get together and take a fresh look at the situation.

If, after reflection, the Commission is of the opinion that these matters deserve another look, then together we can do the groundwork necessary to determine whether any rule changes are really needed and, if so, to arrive at reasonable proposals based upon a full understanding of their objectives and impacts. This approach would certainly be within the spirit of the Governor's Executive Order 97-02, and with good rulemaking practices in general. The companies do not believe this would need to be a prolonged process.

## II. THE DRAFT RULES' IMPACTS

**The draft rules would have significant legal and operational impacts.**

By definition, the Commission's rules mandate or proscribe conduct. Rules that set deadlines and mandate discounts and payments - - as do the proposed rules in question - - are especially serious matters. Such rules should be promulgated only upon a strong showing of need, reasonableness, and legal authority. We need to step back and take the time and make the effort together to determine what, if any, new rules are warranted.

Failure to comply with Commission rules can result in criminal prosecution, as well as the assessment of financial penalties.[5] In addition, rules can increase companies' exposure to claims for civil damages.[6] Deadlines and other standards embodied in rules can also become the bases of other sanctions, penalties and remedial requirements imposed in rate cases and complaint dockets.

Beyond these legal and regulatory effects, Commission rules affect companies' operations and how they manage their businesses. Operational changes made to comply with new rules can increase companies' costs and decrease their revenues, complicate their systems and work processes, and reduce their flexibility and ability to innovate. They can also reduce companies' competitiveness in the market, increase the costs and burdens of new companies entering the market, and limit companies' ability to distinguish themselves with their service offerings. Most important, rules can ultimately be counter-productive for consumers.

---

[5] RCW 80.04.380, etc.
[6] RCW 80.04.440. Rules might also be asserted as the basis of negligence claims.

**The proposed changes to the installation deadline rules are unrealistic and would be counter-productive.**

The Commission's current rule covering installation intervals is WAC 480-120-051. That rule begins, properly, with an emphasis on the company and the applicant reaching agreement on an installation date, and on the company keeping the applicant informed if any delays are encountered. Subsection (1) sets a standard for installing primary telephone service of 5 days 90% of the time.[7]

Proposed WAC 480-120-XXX drops the references to agreed installation dates and cuts the allowed margin in half by moving the 5 day standard from 90% up to 95%, on a monthly basis measured at the exchange level.[8] In small exchanges, the proposal actually cuts the margin by more than half, due to the statistical effect of small numbers and rounding. This proposal is inconsistent with the companies' current practices and service levels. If it were implemented, it would drive counter-productive operational changes and increase the companies' costs.

The companies' already focus on meeting the requirements of individual applicants. Five days is an arbitrary standard. There is no set period of time within which applicants, in general, need or expect primary service to be installed. They are much more concerned with the companies keeping their commitment once an installation date has been settled. The current rule's combination of a 5 day interval with a 90% standard provides some leeway for the reality of applicants' varying requirements -- and for the fluid nature of the companies' workloads. A 95% standard would not.

The companies size, deploy and manage their resources to efficiently accommodate an ever-changing mix of work. They do not have crews standing by in every neighborhood. In addition, the companies with multiple exchanges do not manage their workforces at

---

[7] "Primary" means the first - -or main - - service for a customer, as distinguished from second lines, third lines and so on. This aspect of the rule reflects a proper focus on activating telephone service for customers who are without service, with additional lines for customers already in service receiving a lower priority.

the exchange level as contemplated by the proposed rule. Rather, they efficiently staff and manage resources at levels covering multiple exchanges.

The same general workforce handles not only installation of primary services but also installation of other services, as well as outage restoral, repair and, in some cases, construction. The companies do not, of course, control the number of installation orders and repair requests they receive, or the number of outages they suffer. The mix of these activities varies during the year, month, and day. Winter weather, for example, causes construction activity to decrease and repair activity to increase. Installation orders tend to increase at certain times of the year (such as late summer) and within the month (the first and last days of the month tend to have spikes in new orders). At any time emergency repair situations such as cable cuts may require personnel to be diverted from installation work and, at times, construction work. Employee absences due to training, vacations and illnesses also play a role in the companies' ability to meet workload requirements on a given day. Thus, at 8 a.m. a company may be able to commit to 3-day installations but by 10 a.m. it is forced to 6-day intervals. And then a day later, after it has restored service outages, cleared repair orders and/or caught up with a spike in new service orders -- and an employee returns from sick leave, it can commit to 4-day intervals.

All these circumstances mean that the companies simply cannot realistically provide 5-day installations at all times in all locations. The current rule's 90% standard is, therefore, already difficult to meet every month in every place, but over the course of a year it fairly well accommodates the variances in the companies' ability to install primary services statewide while meeting repair and construction needs. A move to a 95% per month per exchange standard would be unrealistic.[9]

---

[8] Other wording changes from the current rule create uncertainty about when the 5 days begins to run.

[9] This is especially the case because draft rules -XXX and -XXY contain no exceptions for weather, outages, or other circumstances beyond the companies' control. But as critical as such provisions are to rules that set numerical standards, they are a second-best solution to standards that are unreasonable in the first place. The use of unreasonable standards simply creates unnecessary disputes over the application of the exceptions to a company's performance.

A 95% standard would be unrealistic for larger companies and exchanges, but it would be especially untenable for smaller exchanges and companies. In those cases, missing one order could cause a violation of the standard. Moreover, in those locales the same handful of technicians is responsible for all aspects of outside plant: new construction, service installation, repairs, responses to emergencies, and so on. Under the proposed rules, which do they do first? In many cases, every choice would carry a penalty or sanction.

To attempt to meet a mandate to reduce over-5 day intervals by half, the companies would have to redeploy resources from other types of service orders, from repair and from construction, and/or over-staff their workforces. The cost to increase staffing would have a multi-million dollar impact on revenues and on operational and administrative costs.

Subsection (2) of the current rule sets a standard of 99% of all primary service orders being filled within 180 days. Proposed WAC 480-120-XXX(b) would cut that deadline in half -- to 90 days. Proposed subsection (c) would set a new perfection standard of 100% within 180 days. These proposals are unrealistic. In many parts of the state necessary engineering and material ordering lead times combine with winter conditions to make it impossible to fill some service orders within 180 days, let alone 90 days.

Finally, draft WAC 480-120-XXY would create another new standard: installation within 180 days of 100% of orders for other than primary service. Companies are already fully incented by the market to provision non-primary services as soon as is practical. The companies are not aware of any problems that call for such a new rule.

**The proposed changes to the service restoral deadline rules are unrealistic and would be counter-productive.**

WAC 480-120-520 covers "major outages."[10] The proposed changes to that rule would significantly shorten the deadlines for the restoral of service.

The companies already emphasize repairing out-of-service conditions -- especially major outages -- as soon as possible. Year in and year out they respond quickly and expertly to outages caused by the weather and natural disasters, by cable cuts and car crashes. Their dedicated employees take pride in working diligently over long hours in difficult circumstances to restore service as soon as possible. The companies employ common sense and give priority as needed to restoring any service outages affecting emergency agencies and other public health and safety organizations. The added pressure created by the proposed rule would not make the technicians perform their work better or faster.

The Commission's current rule sets a general standard of 2 days for restoring service outages and specifies a 12-hour restoral deadline for outages affecting public health and safety. The proposed rule would shrink the general deadline by a factor of four. It would also change the 12-hour restoral deadline for outages affecting public health and safety to "immediately." The "immediately" deadline is, of course, literally unrealistic, as the proposed rule's qualifier "if possible" acknowledges. The dictionary defines "immediately" as "without interval of time." Even if the companies stationed repair crews on every street corner in the state they could not restore a major outage immediately. The current standard should not be changed. Similarly, the proposed 12-hour standard for major outages should not be adopted. Winter storms, for example, can cause service outages taking days to restore.

[10] The current rule contains a definition of "major outage," but the proposed rule would move that definition to the WAC 480-120-021 Glossary and change it significantly.

If the companies were subject to the proposed shorter deadlines they would have to divert human and financial resources from other customer service work to attempt to avoid sanctions for violating Commission rules. This would be counter-productive.

**The proposed restrictions on appointment scheduling are unrealistic and would reduce the companies' flexibility.**

The proposal to change a few words in WAC 480-120-051 would unreasonably restrict the companies' flexibility to accommodate customer needs and operational realities.

The Commission's current rule simply requires that, upon request, a company must "specify the approximate time of day" that the technician will arrive. The proposed change to the rule would mandate that the companies make appointments in all cases and commit to four-hour periods.

This requirement would impose restrictions where the circumstances do not warrant them and would significantly complicate the companies' ability to efficiently manage their workloads consistent with real customer requirements. It would increase the companies' costs and -- combined with proposed WAC 480-120-X08; see below -- reduce their revenues.

The installation or activation of some new service orders requires a company technician to go to the customer's premises. Many customers are at their premises throughout the day. This is typical for businesses and is also true of some residential customers. In other cases, the companies endeavor to provide appointments that meet the customers' needs. As discussed above, the unpredictable ebb and flow of the day's activities limits the companies' ability to make appointments, but under the current rule they are able to manage the process and provide good customer service.

The current rule's language should be retained. Adding a four-hour mandate would needlessly restrict the companies' flexibility. For example, an appointment commitment of "between 10 a.m. and 3 p.m." -- or longer -- would be perfectly workable for a customer who will be at the premises all day in any event. But the proposed rule would outlaw it.

**The proposed new monetary sanctions are unwarranted and would complicate operations, increase costs and reduce revenues.**

The Staff's proposals on installation and repair deadlines deal with existing types of rules and standards. Draft WAC 480-120-X08 and -X34, on the other hand, are brand new. They propose major policy changes and would directly and immediately increase the companies' costs and reduce their revenues. The proposal is to mandate changes to the companies' tariffs and prices lists and, in effect, to change the companies' rate structures. The proposal would have a multi-million dollar impact on revenues and operational and administrative costs.

Draft WAC 480-120-X08 would impose three types of sanctions in the form of tariff and price list changes that would discount the companies' rates.

Proposed subsection (1) concerns "the first residential line [and] first two business lines." It would move the 5-day installation standard's compliance level from 90% (or 95%, as proposed in -XXX) to 100%. As discussed above, a company's failure to attain the 90% or 95% performance level subjects it and its employees to various criminal and financial sanctions. Proposed WAC 480-120-X08 would impose additional sanctions on companies that do not meet the performance standard. Furthermore, it would impose financial sanctions on companies that do meet the standard.

In all cases the companies would be required to discount their non-recurring charges and their first month's service charges by 100%. Based on typical rates, these initial discounts would be $50 or $60 dollars for residential customers and over $100 for business customers.[11] Subsequent months' charges may also be discounted by 100%, depending on the length of the installation interval (an additional month's discount for each week).[12]

Proposed subsection (2) applies to all other types of orders and would impose the same level of discounts for orders not filled by the commitment date. The discounts for some services that would be subject to this rule, such as high capacity lines, could be several hundred dollars or more.

Proposed subsection (3) would discount rates by a flat $50 for missed appointments. It would apply not only to installations of new basic service, but also to the installation of any service, and to "disconnects, repairs [and any activity that] otherwise affects the customers service." In some cases this could amount to a double or triple sanction. If the missed appointment caused the installation date to extend beyond five days, there would be the $50 sanction for the missed appointment and $60 or $100 or more for the failure to install within 5 days. If the failure to install within five days caused the company to exceed the performance standard, penalties of $1,000 could also be imposed under draft WAC 480-120-XXX.

For some companies these mandates would require the filing of new tariff and price list provisions. For others, they would force changes in current provisions.

The companies understand that the Staff intends these mandated discounts to be "automatic." That is, customers would not initiate requests for the discounts. Rather, the companies would have to put systems and processes in place to detect when the discounts applied to a given order or appointment and to then make the mandated

---

[11] Put another way, for service ordered on Monday the 1st and installed by Monday the 8th, the charge for installation and the first month's service is $60, but for service ordered on Monday the 1st and installed on Tuesday the 9th, the customer pays $0.0.

[12] If the draft's use of the term "credit" were taken literally as requiring the companies to show these discounts as "credits" on customer bills, they could actually end up owing customers money. For example, if a customer received credits in the amount of the installation charges plus two month's charges and discontinued service after one month, the bill would show the company owing the customer money.

billing adjustment. This feature would guarantee two things: that the discounts would be applied to cases for which they were not justified, and that the companies would incur significant process disruptions and costs.

Among the reasons the Staff has given for the proposal is compensating customers for inconvenience. But there is nothing in the proposed rule that targets such a rationale. Although a customer may not initiate a request for a 6 or 7 or 8 day installation interval, that may be perfectly acceptable to the customer. Few customers wait to order new service until less than a week from when they need it. Yet, if a company provided that customer a 6-day due date, it would suffer a sanction of $50 or $100 or more. In fact, under the literal wording of the draft rule, if the company said "Would 6 days be acceptable?" and the customer said, "That would be great!" the company would still suffer the sanction. And the satisfied customer would receive a windfall.

Similarly, if -- due to the Staff's proposed change to WAC 480-120-051 -- a company made an appointment for "between 7:30 and 11:30 a.m." and its technician arrived at noon, the company would be sanctioned $50. And the customer who was going to be at her business through the lunch hour anyway would receive a windfall.

For the reasons discussed above with regard to the proposed 95% standard, the companies would have to significantly over-staff to meet draft -X08's 100% service level. Obviously, the cost would be much higher than the estimate for compliance with the 95% standard. Any company that was unable to achieve this 100% service level would also incur the costs of the discounts and sanctions and the costs of the systems and processes to implement them. In addition to the direct dollar impact on the companies (and, ultimately, on their prices), this would divert human and financial resources from filling service orders, making repairs, restoring outages, building new facilities, and otherwise meeting customer needs.

Similarly, draft WAC 480-120-X34 would mandate "pro-rata credits" where a given service suffers one or more outages for "more than a total of twenty-four hours in a billing cycle."  Again, the companies understand that the Staff intends compliance to be an "automatic" process.  And, again, the proposal would guarantee the indiscriminate disbursement of discounts/sanctions, as well as significant implementation costs to track outages; identify specific affected customers and the actual, cumulative duration of their outages; tie the total to billing cycles; and input billing adjustments.

It is typical that in outages due to storm damage, cable cuts, and similar situations individual services are restored gradually, one-by-one over the course of the repair effort.  There is no realistic way to track individual customer accounts and the specific duration of their outages.  In addition, not all customers are impacted by all outages. They may be away from home or their business may be closed over an affected weekend.  For ancillary services, such as call waiting or speed dialing, that may experience outages due to equipment or software problems, customers would not even be aware of an outage if they did not attempt to use the feature during that time.

Finally, in almost all cases the administrative cost of complying with the proposed rule (if compliance were possible at all) would certainly exceed the benefit to individual customers.  Basic business service costs barely a dollar a day, and residential service costs about half that.  Ancillary services cost pennies a day.

In explaining the basis of its proposal the Staff has referred to a Puget Sound Energy ("PSE") case.  But that case is not applicable here.  PSE instituted a $50 missed appointment payment due to a settlement in its merger docket.  The Commission said this would protect customers post-merger from "poorly targeted cost-cutting" -- a concern resulting from the fact that the company was subject to a multi-year rate freeze program.  The payment is evidently not automatic, as the company committed to promote customer awareness of its availability.[13]  The fact that PSE agreed to such a

[13] In the Matter of the Application of Puget Sound Power & Light Company and Washington Natural Gas Company for an Order Authorizing Merger etc., Dockets UE-960195, UE-951270; 14th Supplemental Order Accepting Stipulation, Approving Merger; 22nd Supplemental Order Approving Second Supplemental Stipulation.

payment in the context of a merger approval case does not warrant mandating similar programs for other companies in a rulemaking.

## III. CONCLUSION

The companies and the Commission should take a fresh look at these proposals to ensure that the right result is reached. This is especially appropriate since the Commission has recognized that the companies provide good service and there has been no showing that the proposed rules are needed or would be cost-effective.

Often the Commission thoroughly investigates issues with the companies before putting a stake in the ground in the form of draft rules. For example, it recently instituted such a process with regard to its procedural rules (Docket A-010648). The parties and the Commission have not had the benefit of such collaboration in this case.

It is obvious to the companies that many of the proposals are based on misunderstandings, which the companies have been trying to address on an *ad hoc* basis under the pressure of the rulemaking schedule (and also under the large workload from the many other extensive rulemakings the Commission has open). And it appears that other parts of the proposals represent major policy change initiatives that deserve more open and deliberate evaluation.

Therefore, the companies request that the Commission withdraw these matters from the current rulemaking. If the Commission desires to further consider any aspect of these proposals, the companies request that it convene an appropriate forum for a collaborative examination of the current rules, the companies' current operations, and the need -- if any -- for updates to the rules.