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

November 5, 2001

Public Counsel files these comments in response to the Commission's October 30, 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 workshop scheduled for November 20, 2001.

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, it is more apparent than ever that telecommunications services are an essential service, and customer protections should reflect 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 concerns and recommendations to further enhance and refine this rule.

A recurring theme that emerged during the stakeholder workshop held on October 18-19, 2001 is that as a general rule it is difficult for consumers to obtain accurate information about telecommunications rates and terms of service. Therefore, our strong recommendation is that the information in the "consumer information guide" should appear in the welcome letter sent to applicants for new service, as well as in the directory. As currently drafted, subsection (1)(d) of the proposed rule would allow local exchange carriers to choose to provide this information in the welcome letter or in the directory (pursuant to WAC 480-120-042). This means there would be no guarantee as to when the customer would actually receive this information because the rule pertaining to directory service (480-120-042) does not contain a requirement outlining when customers should expect to receive the directory. We believe the consumer information outlined in subsection (6)(a) through (f) of WAC 480-120-042 is extremely important information, and should be easily accessible to consumers. We think that it makes sense to provide this information in the welcome letter sent to new customers (e.g. how to establish credit, how a bill becomes delinquent, etc.), and that it also makes sense to include this information in the directory, as a resource for existing customers. We note that even if this rule goes into effect, current customers would not have received a "welcome letter" with the consumer information guide, and thus it should continue to be included in the directory. Given that most companies indicated at the workshop that they do send a welcome letter to new customers, we do not think

that including the consumer information guide in the welcome letter and in the directory represents a significant burden for the companies.

Public Counsel recommends that subsection (1) of the rule should also require notice to applicants and customers that basic service may not be terminated for non-payment of other services. Public Counsel also believes that subsection (1) should require companies to inform applicants and customers about any service quality guarantees the LEC may be required to offer pursuant to 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.

Suggested language

In the second sentence of subsection (1)(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."

In subsection (1)(d) strike the word "either" and before the phrase "must inform the customer that …" replace the word "or" with "and".

(1)(e) clear and concise notice of any service quality credits the company is required to offer, pursuant to WAC 480-120-X08.

(1)(f) 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.

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

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

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

The purpose of a deposit payment is to reduce the amount of uncollectibles. Prior to adopting a new rule that would provide for a major policy change regarding on what basis a local exchange company is entitled to collect a customer deposit, we recommend that the largest LECs provide data regarding uncollectibles in Washington state. This information would help us determine whether a significant modification of the current rule is justified. To the extent that consumers are filing complaints with the WUTC about the existing rule on establishment of credit, it would be helpful to know whether those complaints to the UTC are focused on certain aspects of the current rule. If so, it may be possible to modify certain provisions of the current rule to address those concerns.

The current proposed version of WAC 480-120-056 is a significant modification of the existing rule. Public Counsel has serious concerns with the proposed rule as drafted. Our concerns focus on the following two issues:

1. The complexity and confusion that may be created—both for consumers and for telephone company representatives—as a result of having a two-tiered system

regarding whether a customer can be required to pay a deposit (depending upon whether the customer is purchasing basic service only or ancillary features).

2. The impact of using credit reports as a means of determining whether a consumer represents a credit risk for the local exchange company.

Creating a two-tiered system for collecting deposits. Public Counsel is concerned that the proposed rule would create a two-tiered system for determining whether a customer should pay a deposit for residential local exchange service that is administratively burdensome and confusing to customers. Large numbers of customers choose at least one ancillary service, such as caller ID or call waiting, as part of their local telephone service. The proposed language in subsection (2), which would allow LECs to use "any reasonable means" to establish credit for customer of ancillary services, could therefore have the effect of applying to significant numbers of consumers.[1] We are concerned that customers may not be aware of the option to avoid a deposit by choosing a basic service package, particularly given that telephone company customer service representatives are encouraging customers to purchase ancillary features or custom calling packages. With respect to the amount of the deposit, it is not clear whether the amount is determined by the *service* (basic or ancillary) or the *customer group* (basic or ancillary). In other words, if a customer is applying for basic service plus call waiting (an ancillary service), and they are determined to pose a credit risk, is the amount of the deposit based upon two months charges for call waiting, or call waiting plus the basic local service?

Using credit reports as a basis for establishing credit worthiness of local telephone customers. Public Counsel strongly opposes the use of credit reports as a basis for determining

[1] Public Counsel is not aware of data as to how many customers subscribe to basic service only, as opposed to ancillary service. Thus, the impact of the proposed rule is hard to ascertain.

whether a customer poses a credit risk for the local exchange company. A credit rating based upon information from a credit report is a poor predictor of the likelihood that a customer will pay their telephone bill because of the lack of correlation between general credit worthiness and credit worthiness vis-à-vis utility bills. In addition, the information found in credit reports is notoriously inaccurate, as several participants at the stakeholder workshop on October 19 mentioned. We discuss both of these issues in further detail below.

A review of customer deposit rules conducted for Commission Staff in 1994 concluded that the use of third-party supplied credit information as a basis for making utility deposit decisions does not represent sound public policy. In that study, Roger Colton states: "Substantial research has found that consumers tend to pay their utility bills before paying nearly any other outstanding credit (other than rent or mortgage obligations). As a result, information from a credit reporting agency that indicates a lack of creditworthiness based on non-utility transactions does not provide useful information as to a customer's likelihood of paying a home utility bill."[2] Colton's review cites research studies that show customers tend to pay their home energy and telephone bills first and their charge accounts last.

During the stakeholder workshop in October 2001, several participants told "horror stories" related to inaccurate information in credit reports. It should therefore come as no surprise that this issue is major source of complaints to the Consumer Protection Division of the Attorney General's Office. Customers who file complaints with the Attorney General typically experience one of the following problems: (1) they were denied credit based on erroneous information in one or more of their credit reports, (2) they tried to get the disputed items

[2] Colton, Roger. *Customer Deposit Demands by US West: Reasonable Rationales and the Proper Assessment of Risk*, Prepared on behalf of the Staff of the Washington Utilities and Transportation Commission, Docket UT-930482, August 1994, page 4.

corrected and were unsuccessful, or (3) they did not receive a response to their initial request to procure a copy of their report to determine why there were denied credit. In a two year period, from 1998 to 2000, the number of consumer complaints filed with the Attorney General's Office related to one of the "Big Three" credit agencies (Equifax, TransUnion, and Experian) increased by 48%.

A recent article in the *Seattle Post-Intelligencer* discussed the frequency with which credit reports contain erroneous information. Washington State Insurance Commissioner Mike Kreidler held a hearing in Seattle November 1, 2001 to gather public comment on the use of credit reports for insurance screening. The article begins, "One after another, consumers went to the microphone last night at a Seattle public hearing to complain about the use of credit scoring by insurance companies."[3] An independent insurance agent was quoted as stating, "I'm aghast at the number of errors and mistakes."[4] We also note that the use of information in a consumer credit report may potentially increase a LEC's exposure to liability under the federal Fair Credit Reporting Act and the federal Equal Credit Opportunity Act.

In summary, Public Counsel is not yet persuaded of the need to substantially modify the existing rule pertaining to the establishment of credit. We believe there needs to be more empirical evidence that the existing framework set forth in subsection (3)(a) through (e) of the existing rule (WAC 480-120-056) makes it difficult for certain groups of customers to establish credit. However, we are not yet convinced of the need for a major revision of the existing rule. Indeed, given that issues related to credit reports are a significant area of consumer complaints to

[3] "Use of credit ratings opposed," *Seattle Post-Intelligencer*, November 2, 2001, page B1. Article written by Jane Hadley.

[4] *Id.*

the Attorney General's Office, Public Counsel is concerned that in seeking to address certain asserted problems with the existing rule even more problems may be created that generate a greater number of consumer complaints.

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 (6) 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. We believe the proposed rule as drafted is arbitrary and unreasonable. Absent objective evidence of fraud, there is no rational basis for the company (or the commission) to assume 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 WAC 480-100-123 in the energy consumer rulemaking.

Public Counsel supports the proposal made by the Spokane Neighborhood Action Program (SNAP) to provide customers with the option of extended payment of a prior obligation over a six-month period at least once every five years.

Suggested language

In subsection (6) 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 "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."

WAC 480-120-081 Discontinuance of service.

Public Counsel supports retaining the notice provisions currently at subsection (5)(b) of the existing rule prior to any disconnection of service. We would oppose any weakening of the existing notice provisions, which provide for written notice and personal contact (delivered notice or attempts to reach the consumer via the telephone). We are concerned that subsection (7)(c) of the proposed rule might result in a weakening of the current rule if LECs are able to disconnect after one written notice is mailed, consistent with subsections (6) and (7) of the proposed rule.

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: "vii. Information regarding the Washington Telephone Assistance Program as well as information regarding the Commission's Consumer Affairs section including relevant contact information."

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)(b) 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. We recommend language

from the current electric and natural gas rules, which have recently been revised (WAC 480-100-138 and WAC 480-90-138). These rules provide that if a utility "is delayed in billing a residential customer, the utility must offer payment arrangements that are equal to the length of time the bill was delayed…"

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

Suggested language

In subsection (1)(b) delete the phrase "and the customer indicates that payment of the delayed charges in addition to regularly billed charges causes a hardship".

WAC 480-120-535 Service quality performance reports.

Public Counsel has concerns with subsections (6)(7)(8) and (10) of the proposed rule, which would require companies to report only those instances where they do not meet the service quality standard for trouble reports, switching, trunk blocking and business office and repair center answer time performance. Our concern is that reporting on an exception basis would impinge upon the ability of the Commission and consumers to track company performance. In addition, with respect to subsection (9), we suggest this subsection be modified so that companies provide a separate tracking of construction orders requiring permits, as distinguished in the proposed 480-120-X16.

WAC 480-120-X12 Response time for calls to business office.

Public Counsel believes that it is important that consumers have an option to speak with a live representative when they call a business office. We further believe that an automated system should notify callers of the option to speak with a live representative at an early stage of the call.

Consumers should not have to navigate a lengthy "menu" before learning which digit they must press to speak with a human being.

WAC 480-120-X13 Cash and urgent payments.

Public Counsel opposes any weakening of the existing rule regarding the establishment and maintenance of payment agencies. Payment agencies serve a variety of important functions for consumers, including making urgent payments, payment of deposits, and providing proof of identification. Many consumers, particularly low-income consumers, may not have checking accounts and thus payment agencies provide a location where they can pay for their telephone service in cash.

At the stakeholder workshop, local exchange company representatives indicated that they have difficulty maintaining payment agencies. Based upon comments at the stakeholder workshop, it appears that LECs typically do not compensate the business that serve as payment agencies. Rather, customers who make payments at payment agencies may be required to pay an additional fee, such as $1.00, and this payment may then be retained by the operator of the payment agency. Public Counsel does not believe that customers who choose to make payments at a payment agency should have to pay an additional fee for that transaction. We therefore support language in subsection (2) of the proposed rule.

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

Public Counsel supports the recommendations proposed by the Spokane Neighborhood Action Program at the October 18-19 stakeholder workshop that this rule be modified to provide WTAP and enhanced tribal lifeline customers with an alternative installment payment plan. Our understanding is that many customers who are eligible for WTAP or Tribal Lifeline are unable to

qualify for telephone service because they have an unpaid prior obligation. We would strongly support an effort to develop an alternative payment plan that would allow such customers to enroll in WTAP or Tribal Lifeline while also making payments to pay off a prior obligation.

In addition, we also believe that WTAP and Tribal Lifeline participants should not be precluded from using the restoration of service provision set forth in this rule if they have already used the one-time six month payment arrangement set forth in WAC 480-120-061. Customers who enroll in WTAP or Tribal Lifeline pose much less of a credit risk to LECs, and should be in a much better position to pay for their basic phone service, given that the rate is $4.00 (WTAP) or $1.00 (Tribal Lifeline). We therefore recommend the deletion of the final sentence of the proposed rule.

CONCLUSION

In general, Public Counsel supports many of 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. However, we do have some significant concerns with aspects of some of the proposed rules, particularly the establishment of credit rule (WAC 480-120-056), as described in our comments.