November 5, 2001

Carole Washburn
Executive Secretary
Washington Utilities and Transportation Commission
1300 South Evergreen Park Drive SW
PO Box 47250
Olympia, WA 98504-7250

Re: Docket No. UT-990146 - Comments of the Washington Independent Telephone Association

Dear Ms. Washburn:

In response to the opportunity provided in the Notice of Opportunity to Comment Draft Rules, the Washington Independent Telephone Association (WITA) submits these comments. The purpose of these comments is to address some of the substantive issues raised by the Draft Rules. For the most part, these comments will not address issues of grammar and punctuation.

The format for these comments is to set out the reference to the rule under discussion. In addition, references to line numbers are to the line numbers as contained in the August 23, 2001 Discussion Draft.

WAC 480-120-041 Availability of information

The first issue raised under this proposal is a question of need. What is the demonstrable need for the Commission to require that all companies send out a "welcoming letter" or "confirming letter"? Given an overriding purpose to the review of telecommunications rules to streamline and reduce regulation, why is an additional regulatory cost being imposed?

Beyond the general question, there are a number of specific issues related to the draft rule. If the rule is to be adopted, WITA suggests that the standard of five business days at lines 332 and 351 be changed to ten

business days. Five business days may be too short a period of time, particularly on the change of service, for the companies to provide the "confirming letter."

In addition, the words "if reasonably available" should be substituted for the words "if applicable" on line 343 and inserted after the word "request" on line 361. The company may not have this information available since many times the change is made according to CIC numbers as contained in the company's list of available carriers and the company may not have the marketing name or numbers associated with that CIC available to it.

WITA suggests that the rate information referenced on line 338 be deleted. This information may be difficult to include in a "welcoming letter", particularly for companies with multi-state operations or companies that are part of a larger system of companies where the letter is generated for all affiliated companies in a central location. Further, this information could cause as much confusion as problems it may solve. For example, if an innocent typographical error is made in the letter as to rates, is the customer entitled to a lower rate than what is in the tariff if the lower rate is stated in the letter? To avoid such a situation, there would need to be a disclaimer in the letter that the customer is to be charged according to the rates set out in the tariff or price list. Because a rate stated is followed by a disclaimer, the customer is going to wonder what is going on and the letter may generate more calls to the company than would a "welcoming letter" that states the services without the rates.

This question is compounded by the requirement contained in line 358 and 359 for the confirming letter when there is a change in service. Not only is the Commission asking the company include a comparison of rates, but to describe the material effects of the change. What constitutes "material effects"? What happens if the company does not describe effects that the customer thinks is material, but the company does not? Who is going to arbitrate what is a material effect? The Commission staff? WITA suggests that subsection (b) beginning on line 358 read simply "The changes in the service(s)."

WAC 480-120-042 Directory service

The changes that are made in this rule are generally improvements over the existing WAC 481-120-042. This is a good example of a rule that the Commission has updated to remove outdated provisions.

WITA suggests that the words "if applicable" be added after the word "program" on line 412. Many of the WITA members are not in an area affected by the Federal Enhanced Tribal Lifeline Program and therefore it is an unnecessary cost to require the companies to include such a description. It would also be confusing to the customers since that program is not available in the areas served by many of WITA's members.

WAC 480-120-X31 Intercept services

For some small companies, the requirement contained in the first portion of the sentence beginning on line 424 is not possible. Some of these companies do not even have a directory assistance operator, but instead route directory assistance calls to the customer's pre-subscribed intraLATA or interLATA carrier. Where a company does have local directory assistance, it is most often provided under contract with another carrier and under existing contracts there is no available mechanism for the company to require the directory assistance operator to maintain the customer's correct name and telephone number in its files.

WAC 480-120-051 Application for service

On line 487, WITA suggests the word "or" be replaced with the word "and." As currently written, if an applicant meets the requirements in the Commission's rules for applications, the application must be processed even though the application does not meet the tariff or price list requirements.

WITA suggests that the words "for services offered by the company in the area requested by the applicant" be added after the word "applications" in line 486. The rule as proposed does not include within it the concept that an application can be denied. The entire rule is set up on the assumption that if an applicant fills out an application correctly in form, then the application is to be processed and service provided. However, an application is just that, an application for service. The rules should reflect the concept that the application may be denied because the applicant is requesting service that that can not be provided. A clear example of this is DSL service. It may not be known whether or not DSL service is available to a customer until after an application is taken and an effort is made to provide the service. The application may have to be turned down because the service can not be provided due to technical limitations.

To carry this concept further, WITA suggests that the language "where reasonably subject to determination" be added at the beginning of the text on line 488. There are many instances when the specific date to provide service can not be known at the time of application. For example, if construction and permitting are required, it is not possible to give the specific date for service.

Perhaps a better approach would be to separate out the concepts of application and acceptance altogether. This could be done by rewriting subsections (1) and (2) as follows.

> (1) At the time of application, a company must process application for services offered by a company in the area requested to be served by the applicant, when an applicant for service for a particular location has met all tariff or price list requirements and applicable commission rules.
>
> (2) If an application for service is accepted by the company, a company must
>
> > (a) Inform the applicant of the specific date when service will be provided; or
> >
> > (b) If service can be provided only after construction and/or permitting processes are followed, inform the applicant of the estimated date when service will be provided.
>
> (3) Each company must maintain a record in writing, or an electronic format, of each application for service, including requests for change of service.
>
> (4) When installation of new service orders requires on-premises access by the company, the company must specify the time of day for installation within a four hour period and must notify the customer of such installation. Within five days of the date of acceptance of the application, or at an agreed date following construction and permitting processes where those are required.

WAC 480-120-061 Refusal of service

It is WITA's understanding that subsection (2) of this Draft Rule is going to be revised to insure that any potential to construe the rule to require the company to build facilities is removed. In addition, there are certain highways where a company can not secure a public right-of-way. These are the limited

access highways under the jurisdiction of the Washington State Department of Transportation. On some of these limited access highways, the WSDOT will not grant franchises. As written, there is an implication that there is an absolute duty on the company to obtain a right-of-way on such highway, if that is the means of providing service to a customer. This can be an issue for some companies since limited access highways include far more than simply I-5 or I-90.

There is also a concern under subsection (7) that the "one-time" option applies to even those customer who have been disconnected from service for nonpayment. Generally, before a customer is disconnected for nonpayment, the company has already expended a great deal of time with that customer trying to explore various payment options, including payment over a period of time. For whatever reason the customer is either determined not to accept that option or tried other options and failed to meet its obligations. Once disconnected for nonpayment, this option should not be available. WITA also understands that staff is going to review the language of both subsections (6) and (7) to clarify the application of these obligations.

WAC 480-120-081 Discontinuance of service--Company Initiated

There was a great deal of discussion of this rule at the October 18 and 19 workshop. WITA understands that the staff is going to undertake a substantial review of this rule. WITA reserves its comments until its had an opportunity to review the revised draft.

WAC 480-120-X33 Customer Complaints--Responding to Commission

WITA is concerned about the provisions contained in subsection (2)(b) where the Commission staff person must grant permission to the company before the company can contact the complainant. Many times it is necessary to contact the complainant in order to comply with the requirement that the company thoroughly investigate the complaint. The company should be able to contact the complainant to discuss the complaint without first getting Commission staff permission to do so.

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

There is a threshold problem with this draft rule. If a company only has live customer service representatives, it is impossible for the company using that system to do the measurements to ensure that such things as the average

speed of answer for calls to a business office during business hours does not exceed 30 seconds.

For those that do have automated systems, there should be an exception for events that cause massive inbound calling such as a cable cut or some other activity that is outside the control of the company. It might also be appropriate to build into the rule a bifurcated response time such as 90 percent of the calls within an average of 60 seconds and 100 percent of the calls within an average of 120 seconds.

WAC 480-120-515 Network performance standards

An important issue in considering not only the draft WAC 480-120-515, but the other technical standards rules contained in, for example, WAC 480-120-520 and 525, is that there has been a basic shift in approach. The existing rules are written as engineering standards. In other words, companies are to engineer their networks to the standards set out in the rules. The draft rules revise the engineering standards to become performance standards. As a performance standard, companies will need to engineer to a higher level in order to be sure the network meets the performance standards. In addition, performance standards can raise issues of liability, particularly in light of the proposed deletion of existing WAC 480-120-500(3).

WITA is appreciative that some of its earlier suggestions have been incorporated into the current draft. WITA does have a continuing concern about the wording in subsection (5). A continuing, very important consumer issue, is that sometimes interexchange carriers fail to order sufficient quantities of service to avoid blocking conditions. This affects the customer's ability to call and to receive calls. The LEC does not have the ability to put additional trunks in place unless trunks are ordered by the interexchange company. In addition, this rule suggests that an interexchange carrier can order a grade of service that is not provided by the LEC and the LEC must provide that grade of service.

To address these two concerns, WITA suggests that subsection (5) be rewritten as follows:

> (5) Service to interexchange carriers. Each LEC must provide service to interexchange carriers at the grade of service ordered by the interexchange carrier as established by the LEC's tariff or price list. Each interexchange carrier must order sufficient facilities from each LEC

to allow 99 percent of all calls to be completed without encountering a blocking condition.

WAC 480-120-520 Major outages

WITA's primary concern with this rule is what is defined as a major outage. WITA suggests that the existing definition be retained. There has been no demonstration that a problem exists concerning the existing trigger and WITA does not see a need to change that definition.

There was a great deal of discussion concerning that notice provisions contained in this draft rule. Is it WITA's understanding that the notice provisions are under staff review and WITA will comment once the revisions are available.

WAC 480-120-525 Network maintenance

WITA appreciates the fact that some of the changes requested by it have been incorporated in the current draft.

WAC 480-120-X15 Response time for repair calls

The same concerns that were expressed to draft WAC 480-120-X12 apply here as well.

Conclusion

The effort to prepare these comments was, at best, frustrating. The drafts that were provided did not identify in any sort of legislative style the changes from the earlier drafts. Therefore, each rule had to be read with a careful eye and compared to the earlier drafts to try to determine where changes had been made.

Further, it seems that requiring comments to be filed at this point in time puts the cart before the horse. There was a very good discussion of some of the more controversial rules at the October 18 and 19 workshop. At the conclusion of the discussion of each rule in the workshop, the facilitator described the status of the rule and any "take back" items that resulted from

the workshop discussion. It would seem to be more logical to have the workshop minutes published in advance so that the "take back" items were clearly identified. Then it would make sense to have those "take back" items resolved. For example, if Commission staff agreed to revise a rule, that revision should be made available. Or, if Commission staff agreed to review a rule and believes that the draft rule should not be changed, at least that would be made known. Then, comments could be prepared and filed with the Commission. Given the current timing, WITA is commenting on rules that may well be undergoing change at this very time. This also raises the question of when comments will be allowed to address the revisions that are made to the draft rules.

In addition to the sequencing of events, it was very difficult to address the vast number of rules involved in this rulemaking. The subject matter involved in the rulemaking would appear to break down into some logical sections. The consumer protection rules would be one section. The network performance rules would be another section. And then there is a third section of miscellaneous provisions. The project in its current form is almost to big to really address with the care that needs to be taken. In addition, it is difficult in addressing this volume of material to be sure that cross references are appropriately contained within the rules and that another rule that is inherently implicated in a draft rule is not left out or forgotten.

WITA asks that we give these rules the attention that they deserve. WITA suggests that future opportunities to comment be broken down into smaller segments and that the timing of the comments be such that they can profitably address the most recent work product coming out of the workshops.

Sincerely,

Terrence Stapleton

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