BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RE: Possible Rules Relating to )

Prepaid Telephone Service ) Docket No. UT-971469

Chapter 480-121-040(2)(b) WAC )

)

SECOND SUPPLEMENTAL COMMENTS OF THE

TELECOMMUNICATIONS RESELLERS ASSOCATION

The Telecommunications Resellers Association (“TRA”), on behalf of its members and pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) December 2, 1998 *Notice of Additional Opportunity to Submit Written Comment*, hereby submits additional supplemental comments regarding the Commission’s proposed prepaid telephone service rules.

TRA has commented on the Commission’s proposed Prepaid Calling Services rules twice previously.[[1]](#footnote-1) In its most recent comments, TRA raised serious concern over several proposed provisions that remain unchanged in the final version of the Commission’s proposed prepaid calling card rules. These provisions include business office and technical assistance staffing requirements, network performance standards, Commission complaint right notification requirements, and in-state prepayment deposit requirements.

TRA continues to believe that these requirements will impose undue costs and burdens on legitimate prepaid calling card providers and on smaller providers, such as many of TRA’s members in particular, with negligible added consumer protection. The Commission’s overly cautious efforts to protect consumers will result in some rules for which compliance may be virtually impossible for some and others which will stifle legitimate competition. The Commission can significantly reduce unnecessary regulatory burdens on providers of discretionary prepaid calling card services without undermining the appropriate consumer protection the Commission strives to achieve. With that end in mind, TRA urges adoption of the following amendments to its proposed rules.

BUSINESS OFFICE AND TECHNICAL ASSISTANCE CENTERS SHOULD NOT REQUIRE PERPETUAL STAFFING.

Proposed WAC 480-120-052(2) and (3) remain unchanged in their requirement that prepaid calling card providers staff business office and technical assistance centers on a 24 hour a day, seven day a week basis. TRA has argued, and continues to maintain that such staffing requirements are unreasonable and burdensome to smaller companies, particularly in light of the fact that perpetual staffing of customer service entities is unnecessary for discretionary services[[2]](#footnote-2).

TRA fully agrees with Staff’s assessment that consumers who pay for service should appropriately expect the service to work and should have a means to contact someone for assistance[[3]](#footnote-3). Consumers of any product or service should rightly expect that if problems arise, the provider should be readily available to resolve them. Yet it is unclear why prepaid calling card service providers should be held to much higher customer service access standards than providers of other discretionary services or products. Certainly consumers of other discretionary products and services typically have access to customer service representatives exclusively during business hours. Consumers recognize and accept that many retailers or manufacturers may be contacted only during normal business hours and are not adversely affected or inconvenienced by the inability to contact customer service representatives after business hours[[4]](#footnote-4). Those who do call after business hours in any event will likely be able to leave a message and receive a return call on the following business day. Prepaid calling card provider customer service representative availability should be held to no greater expectation.

The fact that telecommunications companies have “historically” provided repair service 24 hours a day, as staff suggests, is not a sound basis for imposing a similar requirement on competitive discretionary service providers. Staff’s reliance on historical precedence seemingly ignores the fact that historic provision of non-discretionary telecommunications services has been provided by monopoly service providers whose customer service centers have been funded by a large base of captive local rate payers, or interexchange carriers who provided presubscribed toll services also funded over larger customer bases. To believe that prepaid calling card providers should be required to offer perpetual customer service availability by virtue of the fact that the provider is offering a telecommunications service constitutes a proverbial apples to oranges comparison. Presubscribed and discretionary telecommunications services are not necessarily the same.

Smaller providers of prepaid calling card services will not have the financial capabilities or extensive customer bases over which to spread such costs to justify the expense of maintaining perpetually staffed customer service organizations, particularly if the potential for receiving calls after business hours is limited. For example, if the hypothetical cost of staffing a customer service center were $10.00 per person per hour, the monthly cost of full time staffing with one person alone would be $1,270.00[[5]](#footnote-5). Smaller companies with limited service areas could hardly justify the expense of maintaining a full time customer service staff simply to comply with Washington’s proposed perpetual customer service requirement if only a few hundred dollars in prepaid calling card revenues were realized each month. To simply suggest that this is a “cost of doing business” in Washington is akin to raising a discriminatory entry barrier that precludes all but those companies who anticipate significant Washington revenues or who already support full time customer service organizations from entering the market.

Financial considerations on providers should be especially important in light of the minimal effect that limited availability of customer service representatives after business hours would have on prepaid calling card users. The infinitesimally small possibility that an individual who encountered a problem with a prepaid calling card during non-business hours and would not have alternative calling access to alternative telecommunications services, as staff suggests, should not the determining factor in imposing costly perpetual staffing requirements. Such a requirement is overkill. Maintaining 24 hour per day customer service staffing requirement with the anticipating a situation having a tenth or a hundredth of a percent of probability of occurring would impose unreasonable costs entirely out of line with any arguable “risk”. Prepaid calling card users will be no more harmed by providers who do not retain full time staffing, than they are by providers of other discretionary products and services who do not maintain perpetual staffing.

Alternatively, WAC 480-120-052 (2) and (3) should offer providers the *option* of 24 hour per day/7 day per week customer service staffing *or* a requirement that service providers staff customer service centers during business hours and provide customers with the ability to leave messages if calling after business hours. Those providers who do not provide full time customer service staffing may then be required to return all customer calls no later than close of business the following day[[6]](#footnote-6). WAC 480-120-052(2) and (3), as proposed, represent a significant and costly impediment for smaller service providers which carries dubious countervailing public benefit. Prepaid calling card providers should be subject to the same customer service availability expectations imposed on providers of other discretionary services and products as long as prospective customers are so informed. Perpetual customer service staffing decisions should ultimately be driven by market and competitive pressures, not by regulation.

THE COMMISSION SHOULD RECOGNIZE THE LIMITED ABILITY OF RESELLERS TO MEET TECHNICAL STANDARDS.

TRA has argued that because resellers rely almost exclusively on the technical network services provided by underlying carriers, they are incapable of meeting the Commission’s proposed performance standards in WAC 480-120-052(9)[[7]](#footnote-7). Staff believes, and TRA agrees, that “any company that holds itself out to provide service to the public should ultimately be responsible to its consumers for their service.[[8]](#footnote-8)” TRA also agrees with Staff that the reseller should work with the underlying carrier to resolve network problems. Yet to hold a reseller unilaterally responsible for substandard performance when it has made a good faith effort to resolve service affecting problems with its underlying carrier would serve only to punish the reseller and allow the underlying carrier to operate with seeming impunity. This would be particularly harmful if the underlying carrier is also competing against the reseller. Taken to a logical extreme, the underlying carrier could engage in anti-competitive behavior by forcing its resale competitors into non-compliance.

While TRA is not proposing a change to the proposed performance standards language, TRA urges the Commission to recognize the limited ability of resellers to control underlying carrier performance, and consider a reseller’s efforts to resolve problems as a mitigating factor in enforcement action or end user refunds under WAC 480-120-052(8). To the extent that a reseller has taken all reasonable steps and precautions to meet established performance standards under its control, the reseller should not be held responsible for the substandard performance of its underlying carrier. In such instances, the Commission should consider enforcement action and refunds against the underlying carrier rather than compel the reseller to assume burdensome and costly formal complaint action against the underlying carrier to recoup penalty assessments.

THE PROPOSED COMMISSION COMPLAINT PROCESS DISCLOSURE REQUIREMENT IS OVERLY BROAD AND UNNECESSARY.

Pursuant to proposed rules WAC 480-120-052(5)(b)(v) and WAC 480-120-052(6)(a)(x) service providers would have to inform prospective subscribers of their right to contact “the state regulatory agency which has oversight within the state where prepaid service was originally purchased.” This requirement would establish an unnecessary requirement, as has been argued by TRA[[9]](#footnote-9), and overly broad requirement extending beyond the Commission’s jurisdiction to regulate telecommunications services in Washington.

Because the Commission retains authority to regulate telecommunications services exclusively within the state, it can not lawfully require providers to include a general statement about consumer rights to contact regulatory agencies in other states, no matter how technically correct such a statement may be. As proposed, the requirements would open a Pandora’s box to potential legal and interpretive issues in the absence of similar requirements in virtually every other state. To amend the requirement to be Washington-specific, however, would impose an even greater burden on service providers. Such a specific requirement would compel production of state-specific cards or point of sale material at great cost to providers serving broad geographic areas. These costs could become prohibitively expensive for smaller providers and act as yet another entry barrier as TRA has previously argued.

It is unclear why such disclosure is necessary at all when consumer rights information is provided through telephone directories which are generally available to the public. Consumer rights information is contemplated to nevertheless be provided on an *ad hoc*basis through the provider’s customer service representatives under WAC 480-120-052(5)(c) and WAC 480-120-052(6)(b). These provisions coupled with the reality that many consumers will discard, disregard, or forget specific disclosures, raise doubt as to the validity of the notice requirements when compared to the expense to providers of implement them.

Such disclosures are appropriate at the time consumer grievances can not be adequately resolved by the provider. If the provider remains required to inform the customer of his or her right to file a complaint with the Commission upon customer request, no additional point of sale notice should be required. TRA urges that proposed rules WAC 480-120-052(5)(b)(v) and WAC 480-120-052(6)(a)(x) be deleted in their entirety.

PREPAID CALLING CARD PROVIDERS SHOULD BE ALLOWED TO MAINTAIN DEPOSIT ACCOUNTS IN OUT OF STATE BANKS THAT MAINTAIN WASHINGTON BRANCHES.

Proposed WAC 480-120-058(c) retains a previously proposed requirement that prepaid deposits be maintained in a Washington state bank. TRA has addressed the burden that the requirement to maintain funds with banks located in Washington may have on out of state providers[[10]](#footnote-10). TRA continues to urge the Commission to authorize out of state providers to deposit prepayments in out of state banks having Washington-state branches, as an alternative to WAC 480-120-058(c). The physical location of funds should not be a consideration if such funds are readily available in the event of provider non-performance. Enabling providers to retain prepaid funds in out of state banks having Washington-state branches would greatly simplify the process of establishing prepaid fund accounts without the need to coordinate the establishment of an account with an in-state bank having no prior relationship or knowledge of the service provider. The public would in no way be affected if advanced payment accounts resided outside of Washington so long as ready access to those funds was retained.

V. CONCLUSION

TRA’s continues to support of the Commission’s well-reasoned prepaid calling card rules with the exceptions noted herein. Proposed requirements pertaining to perpetual staffing requirements, performance standards, notification of the Commission’s consumer complaint process, and in-state bank accounts for the retention of prepaid funds impose costly and burdensome requirements particularly for smaller providers of discretionary prepaid services. At a time when Governor Locke has asked state agencies to consider regulatory streamlining, several of the proposed rules are inconsistent with the Governor’s regulatory streamlining directives as they offer negligible added public protection in return for a significant burden on regulated entities. TRA urges the Commission to adopt the proposed prepaid calling card rules consistent with its recommendations herein.

Respectfully submitted,

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1. *See e.g.* most recently Supplemental Comments of the Telecommunications Resellers Association, (August 6, 1998). TRA incorporates its August 6, 1998 comments herein by reference. [↑](#footnote-ref-1)
2. *Supplemental Comments* of TRA at 4. [↑](#footnote-ref-2)
3. *Telecommunications General Description,* Staff Recommendation, UT 971469 (November 25, 1998) [↑](#footnote-ref-3)
4. As TRA has argued, a provider’s desire to provide perpetual customer service access should be driven by competitive pressure and the desire to meet customer demand. Consumers who are dissatisfied by limited customer service availability will change providers, forcing service providers to act accordingly. [↑](#footnote-ref-4)
5. This hypothetical is based staffing a customer service center with one full time person during four weekday 16 hour night time shifts and one 63 hour weekend shift (5PM Friday to 8AM Monday), a total of 126 hours per week. Compensation would be exclusive of benefits and related administrative costs. This presumes that only one person would be sufficient to meet the Commission’s staffing requirement that “personnel must be sufficient to respond to all inquiries” *and* be able to assist consumers with technical problems. [↑](#footnote-ref-5)
6. Providers who provide customer service access exclusively during normal business hours could so inform prospective users in point of sale material. [↑](#footnote-ref-6)
7. *Supplemental Comments* of TRA at 5. [↑](#footnote-ref-7)
8. Staff *Telecommunications General Description* at 2. [↑](#footnote-ref-8)
9. *Supplemental Comments of TRA* at 7. [↑](#footnote-ref-9)
10. *Supplemental Comments of TRA* at 3. [↑](#footnote-ref-10)