

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**Telecommunications – Operations,
Chapter 480-120 WAC**

Docket No. UT – 990146

JOINT 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 DRAFT RULES AND SBEIS REQUEST

December 7, 2001

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., and XO Washington, Inc. (collectively "the Companies") submit these comments on the draft rules distributed by the Commission on November 16, 2001. We also comment on the SBEIS Questionnaire for these draft rules.

INTRODUCTION

We assume that these November 16 draft rules are intended to reflect the Commissioners' October 10, 2001 statements. In our Joint Comments dated November 16, 2001 we supported the service standards portion of the Commissioners' statements and suggested rule language to implement them. In this filing, we apply our proposals to the new draft rules.

In our November 16 Joint Comments we also encouraged the Commissioners to refrain from imposing guarantee obligations by rule, and instead to work with us in the context of the many customer satisfaction efforts we already have underway. The new draft rules, however, continue to reflect a government mandate approach. We believe that the Commissioners did not have an opportunity to review our November 16 comments before this new draft of the rules was released, because - - as it happened - - our filing and the release occurred on the same day. In these comments we reaffirm our opposition to such unnecessary and inappropriate regulations, and make suggestions

for the draft rules' guarantee provisions to conform them to the Commissioners' October 10 statements, including their invitation to suggest alternative approaches on some points.¹

PERFORMANCE STANDARDS FOR INSTALLATION AND ACTIVATION OF BASIC SERVICE

Subsection (2) of draft WAC 480-120-XXX should be deleted for two reasons. The proposal writes too much penalty language into the rule. As Chairwoman Showalter stated at the November 20, 2001 workshop in this docket, excessive penalty language in a rule is unnecessary and surplussage.

First, the proposed rule provision that companies will be penalized on a per order basis is arbitrary and unwarranted. Such a rule is contrary to the Commission's precedent of basing penalties on the entirety of the circumstances.² A company may not meet an installation standard for one or more orders due to a number of reasons, and multiple misses of a deadline may have a common cause. The Commission should not foreclose itself in a rule from taking approaches other than the proposed penalty-per-order formula.

¹ These informal Comments suggest revisions to the proposed rules that reflect what the Coalition believes to be the Commission's intent. These Comments do not address (a) the Commission's authority to adopt such rules or (b) any other legal issues. The members of the Coalition reserve their right to address such issues (jointly or individually) in subsequent comments.

² *MCImetro Access v. U S WEST, Inc.*, Decision and Final Order (February 10, 1999), Docket UT-971063.

Second, the draft rule proposes a possible tripling-up of penalties where a company may have orders that exceed the standard in more than one subsection of part (1) of the rule. This is inappropriate on its face, does not exist in the current rule, and was not covered by the Commissioners' October 10 statements.

This multiple penalty proposal is also unworkable. For example, suppose a company were to violate the installation deadline standard of subsection (1)(a) by installing only 80 of 100 orders within five business days, with the 20 "missed" orders having taken between, six and sixty days to install. Under subsection (1)(a)'s 90 percent threshold, which 10 of the orders would be considered violations for penalty purposes? The draft rule does not and cannot workably answer the question. It is best to not even attempt to restrict the Commission's judgment by addressing such details in this rule. Proposed subsection (2) should be deleted.

Several other changes should also be made to the draft rule: For example,

(1) In accordance with the Commissioners' October 10 statements, subsection (1) should be amended to make clear that the standard applies to a company's operation on a statewide basis.

(2) "Force majeure"³ should be added to draft subsection (3) of the rule. As we discussed at the October 10 meeting, numerous circumstances beyond a company's control can cause it to miss a standard.

(3) The reference in draft subsection (4) to services being offered under tariff should be deleted. The important fact is the competitive classification - - not the form of Commission filing a company chooses to use. And subsection (4) should cover not only competitively classified companies, but also competitively classified services.

Our changes to the draft rules are set forth in the attachment to these Joint Comments.

PERFORMANCE STANDARDS FOR ORDERS FOR NON-BASIC SERVICE

As with the basic service standards, "force majeure" should be added to subsection (2) of draft rule WAC 480-120-XXY, and the same changes should be made to subsection (3) with regard to competitive classification. These changes are shown in the attachment to these Joint Comments.

³ Properly defined. The definition is the subject of other comments filed in this docket.

DEFINITION OF "ORDER DATE"

The November 16 draft rules include a proposed definition of "order date." This addition is apparently in response to concerns raised by WITA addressing the ambiguity in the draft rules of when an application is complete and the time for compliance begins to run. The first paragraph of the draft definition appropriately reflects the fact that merely placing an order does not make it complete or accepted by the company, but the second paragraph unnecessarily confuses the issue and should be deleted. In addition, the definition should incorporate a properly defined force majeure clause.⁴

INSTALLATION AND ACTIVATION CREDITS

As we have stated individually, in our previous joint comments, in workshops, and in meetings with the Commissioners, it is unnecessary and inappropriate to mandate guarantees by rule. While draft rule WAC 480-120-X08 appears to reflect the Commissioners' contrary October 10 statement on this issue, it is overly prescriptive and should instead preserve flexibility in how the guarantee is satisfied.

As we have informed the Commission, many companies already have in place tariff or price list provisions or operational practices focussed on assuring good customer service, including with regard to appointments and installation commitments. They provide a variety of effective approaches to customer satisfaction, including not only

⁴ Conditions beyond the company's control include customer actions and inaction.

billing credits but also "money back" guarantees and alternative service arrangements. Free of regulatory strictures, companies could also experiment with other customer satisfaction approaches, such as on-the-spot cash, vouchers, prepaid calling cards -- perhaps even frequent flyer miles. There is no need for the Commission's rules to preempt these innovative management initiatives. Accordingly, in the attachment to these joint comments we propose modifications of the draft rule language.

MISSED APPOINTMENT CREDITS

As we have stated in our previous comments, the Commission should not enact a rule that imposes an appointment guarantee burden at all. The current rule is working well, and the companies are acting on a case-by-case basis to reasonably accommodate individual customer needs while maintaining overall service quality. In contrast, the draft rule would impose a new guarantee burden and a more complex performance standard.

On October 10 the Commissioners stated their intent to replace the current flexible approach of WAC 480-120-051 with a mandate that all installation and repair appointments be set within a four-hour window, regardless of individual customers' situations. We were disappointed that the Commissioners apparently do not have confidence that we are operating responsibly under the current rule and managing our activities to reasonably meet customer needs. We explained in our June Joint Comments that a four-hour window mandate is (a) not needed to meet customer

requirements in all cases, (b) would unnecessarily introduce new complexities and costs in the industry's operations, and (c) would usurp management judgment and flexibility.⁵ We urge the Commission to reject the proposed changes to the current rule.

Should the Commission, however, determine to move forward with the draft rule, we propose that the current rule's "upon request" approach to appointments be retained for the new four-hour window standard. We also modify the draft rule's handling of this topic, which it confusingly mixes with the issue of pre-work.

In addition, a practical issue is the amount of notice of a schedule change that the company can give and that the customer needs to adjust his plan to be at the premises. As we explained in our June Joint Comments and in meetings with the Commissioners, workloads are often volatile, with priority repair jobs coming without notice and pulling technicians off of routine installation assignments. The draft rule's four-hour window mandate will make it even more difficult for the companies to give the proposed twenty-four hours notice of scheduling changes - - impossible, in fact, in many cases. We propose a balanced approach, keyed to the giving of notice by 4:00 PM of the day before the scheduled appointment. This gives the customer advance notice of whether the appointment will be kept.

⁵ Some of the Companies addressed this topic further in their individual comments filed on November 5, 2001 in response to the Commission's August 24, 2001 Notice.

In addition, the following points should be incorporated into the draft rules:

- (1) As with the installation credit rule, draft WAC 480-120-X40 should be amended to allow the companies to be innovative in their satisfaction of any guarantee mandate.
- (2) Draft subsection (2) is unnecessary and should be deleted.

These changes are set forth in our attachment.

SBEIS QUESTIONNAIRE

Based on their October 10 statements, it is our understanding that the Commissioners recognize that the companies are already providing a good level of service with regard to installation intervals and appointments, and the Commissioners' interest in imposing guarantee obligations on the companies does not mean that they expect the companies to be perfect and never miss an installation deadline or an appointment. Obviously, that would be unrealistic, and it would be enormously expensive to even attempt to reach such an objective. Our rough estimate is that it would cost us, collectively, tens of millions of dollars to increase our staffing, equipment and facilities to make such an attempt at perfection.

We have not been able to develop a specific cost impact estimate for the proposed installation and appointment guarantee mandate -- as set forth in the current draft

rules. As a conservative order of magnitude, however, we believe that the dollar impact for the industry would be a seven-figure amount.

If the Commission adds appropriate force majeure language and a realistic definition of "order date," as we have recommended in these and other comments, we believe we would be substantially in compliance with the installation standards in draft WAC 480-120-XXX and 480-120-XXY, so we do not estimate a cost impact for those rules.

CONCLUSION

We are in basic agreement with the Commission on the service installation rules, and recommend just a couple of changes: adding a force majeure clause and treating competitively classified services and companies the same.

We also clean up the draft new guarantee rules so that they better reflect reality, do not contain confusing and unnecessary verbiage, and preserve some ability for the companies to be innovative in their customer satisfaction efforts. Our strong recommendation, however, continues to be that the Commission not enact such rules at all but instead work with us to optimize our existing customer satisfaction efforts.

ATTACHMENT TO JOINT COMMENTS

Proposed Rule Language

December 7, 2001

PERFORMANCE STANDARDS FOR INSTALLATION AND ACTIVATION OF BASIC SERVICE

The changes discussed in our comments above are shown below in the draft rule.

WAC 480-120-XXX Company performance standards for installation or activation of access lines

(1) Except as provided in subsection (2), when an application is made consistent with WAC 480-120-051, application for service, the following standards for installation or activation of service apply, measured on the basis of a company's statewide operation:

(a) The LEC must complete, within five business days after the order date, or by a later date requested by a customer, ninety percent of all orders of up to the initial five access lines received during each month.

(b) The LEC must complete ninety-nine percent of all orders of up to the initial five access lines received during each calendar quarter within ninety days after the order date; and

(c) The LEC must complete one hundred percent of all orders for access lines within one hundred and eighty days after the order date.

~~(2) For purposes of determining the amount of penalties that shall apply if a LEC fails to complete the percent of orders required by parts (1)(a), (b), and (c) of this section, each order that the LEC fails to complete in excess of the highest number of uncompleted orders that would not have triggered a violation shall be a separate violation. For example, using the 99 percent completion rate under part (1)(b) of this section, if the LEC received 100 orders in a quarter, and it completed only 94 of those orders, it would be deemed to have committed five separate violations, because it completed five less than required by the section. Violations of parts (1)(a), (b), and (c) will be determined separately, and each order is subject to all three parts.~~

~~(3) The timelines set forth in subsection (1) do not apply when customer-provided special equipment is necessary; when a later installation or activation is permitted under WAC 480-120-071 ("service extensions"); or when the commission has granted an exemption from the requirement for installation or activation of a particular order under WAC 480-120-015; or when force majeure conditions exist. These orders taken under these circumstances will be excluded from both the numerator and denominator in calculating the percentage of orders completed.~~

~~(4) Unless the Commission orders otherwise, this section does not apply to LECs that are competitively classified under RCW 80.36.320 and do not offer local exchange service by tariff or to LEC services that have been competitively classified under RCW 80.36.330.~~

PERFORMANCE STANDARDS FOR ORDERS FOR NON-BASIC SERVICE

The changes discussed in our comments above are shown below in the draft rule.

WAC 480-120-XXY Company performance for orders for non-basic services

(1) Except as provided in subsection (2), the local exchange company (LEC) must complete orders for all non-basic services within one hundred eighty days of the order date or by a later date requested by a customer.

(2) The timeline set forth in section (1) does not apply when a later installation or activation is permitted under WAC 480-120-071 ("service extensions"), ~~or~~ when the commission has granted an exemption from the requirement for installation or activation of a particular order under WAC 480-120-015, or when force majeure conditions exist.

(3) Unless the Commission orders otherwise, this section does not apply to LECs that are competitively classified under RCW 80.36.320 ~~and do not offer local exchange service by tariff~~ or to LEC services that have been competitively classified under RCW 80.36.330.

DEFINITION OF "ORDER DATE"

The changes discussed in our comments above are shown below in the draft rule.

"Order date" means the date when an application for service is complete under applicable tariff or price list provisions and commission rules and the company accepts the order. When the applicant is required to provide equipment, support structure, right-of-way or other items so that the company can install the service, the order date is the date the applicant completes such tasks. ~~applicant requests service unless a company identifies specific actions a customer must take in order to be in compliance with tariffs, price lists, or commission rules. When specific actions are required the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service.~~

~~When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one-hundred-and-eighty-day requirement of WAC 480-120-XXY ("Company performance for orders for non-basic service") the order date is the application date unless the~~

~~applicant fails to provide the support structure or perform other requirements of the tariff or price list. In the event the applicant fails to provide the support structure or perform the other requirements of the tariff or price list, a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff or price list.~~

INSTALLATION GUARANTEE

To maintain some flexibility and innovation under a new rule mandate subsection (2) of draft WAC 480-120-X08 could be modified as follows:

WAC 480-120-X08 Installation and activation Credits guarantees

All local exchange companies (LECs) must include in tariffs installation and activation credits guarantees that conform with this section. The section does not apply to services offered by price list.

(1) ~~The guarantee shall apply~~ LECs must provide a credit to customers ordering a first residential line, first two business lines, or both, if the service is not installed and activated by the due date established at the time of the order. A LEC must establish the due date as the date requested by the customer but is not required to establish a due date that is fewer than seven business days after the order date.

(2) The credit guarantee amount in the tariff must be either:

(a) an amount equal to the non-recurring charge for installation and a pro-rata amount of the recurring charge for each day of delay, or

(b) a fifty dollar credit and an additional fifty dollar credit after each thirty-day period in which the installation is delayed;

(c) The LEC may fulfill the guarantee by crediting the guarantee amount on the customer's bill or by providing equivalent value by other means, including but not limited to, cash, scrip, vouchers, prepaid callings cards, alternative service, and merchandize.

(3) Service credits are not required when a later installation or activation is permitted under WAC 480-120-071 ("service extensions") when construction requirements delay installation or activation, or when the LEC is unable to meet its obligations due to force majeure, work stoppages, or other events beyond the LEC's control. To avoid providing a credit when construction is required for installation or activation, a LEC must have contacted as soon as practicable the appropriate authorities to request applicable utility locations services and permits.

(4) LECs may include in tariffs additional service quality guarantee credits, and additional interim services, such as voice mail, that might aid a customer without service.

APPOINTMENT GUARANTEE

The following language implements the changes discussed in our comments.

WAC 480-120-X40 ~~Missed a~~Appointment guarantee credits.

All local exchange companies (LECs) must include in tariffs or price lists an appointment credits guarantee that conforms with this section. For purposes of this section, an appointment means a commitment that requires the customer or the customer's representative to be present when the LEC installs, changes, disconnects, repairs, or otherwise affects the customer's service.

(1) If during the contact to schedule the appointment the customer makes known that a longer period is not acceptable, the LEC must specify a four-hour period before the end of which its technician will arrive to begin work.

(2) The LEC keeps the appointment when any necessary work in advance of dispatch has been completed and the technician arrives within the scheduled period, even if the technician cannot complete the order until a later date.

(3) The guarantee must be in an amount of LECs must credit customers not less than \$50 and apply when the LEC fails to keep an appointment and does not notify the customer by at least 4:00 PM the prior day 24 hours in advance of the broken of the need to reschedule the appointment. The LEC may fulfill the guarantee by crediting the guarantee amount on the customer's bill or by providing equivalent value by other means, including but not limited to, cash, scrip, vouchers, prepaid callings cards, alternative service, and merchandize.

~~The LEC keeps the appointment when the necessary work in advance of dispatch has been completed and the technician arrives within four hours of the earliest time at which the customer was required to be present, even if the technician cannot complete the order until a later date.~~

~~(2) When a LEC notifies the customer at least twenty-four hours prior to the scheduled appointment that a new appointment is necessary and a new appointment is made, the order date, installation or activation requirements and credit requirements of WAC 480-120-X08, and the timelines set out in that section are not affected by the LEC's action to change the appointment. A~~

~~company-initiated changed appointment date is not a change to the order date for purposes of determining compliance with WAC 480-120-XXX and XXY.~~

~~(34) A LEC is not required to pay a missed appointment credit. The appointment guarantee does not apply when it a LEC is unable to meet its obligations due to force majeure, work stoppages, or other events beyond the LEC's control.~~

(45) LECs may include in tariffs or price lists additional service quality guarantee credits, and additional interim services, such as voice mail, that might aid a customer without service.