BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Rulemaking Concerning Telecommunications Service (Line) Extensions (WAC 480-120-071 and 480-123) Comment Opportunity (CR 101)	DOCKET NO. UT-073014

REDACTED
SECOND COMMENTS OF PUBLIC COUNSEL

February 11, 2008

I. INTRODUCTION

The Public Counsel Section of the Washington Attorney General's Office (Public Counsel) respectfully submits these comments in response to the Commission's Notice of Opportunity to Comment on Draft Rules (CR-101) issued January 10, 2008. Public Counsel believes that the primary goal of this rulemaking should be to create a balanced rule that both promotes universal service and maintains reasonable rates. Such a rule should accommodate the need for extensions while minimizing the costs borne by companies and, ultimately, the general body of ratepayers.

As discussed below, we respectfully suggest that the Commission retain the existing rule but amend it to include a cost allowance, or price cap, for individual applicants. A cost allowance would limit the overall cost to companies while still allowing for the construction of most extensions. Alternatively, if the Commission chooses to adopt the draft rules, we recommend a number of changes that would more equitably balance the interests involved.

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II. SCALE OF THE PROBLEM

Neither the number nor the cost of extensions appears to be a significant problem in Washington State. Based on data provided by four companies that are participating in this rulemaking, approximately 79 extensions were constructed in 2006.[1] During the first ten months of 2007, these companies constructed approximately 47 extensions at a total estimated cost of just under $665,000.[2] In the first ten months of 2007, the average per-customer cost for three of the companies[3] was $11,696, and the average distance of extensions was 2,108 feet, or just less than 4/10 of a mile.

Because the scale of the problem is small, Public Counsel does not believe a wholesale revision of the current rule is needed. Instead, we recommend the Commission take the incremental approach described below.

III. PUBLIC COUNSEL'S COST ALLOWANCE ALTERNATIVE

Public Counsel recommends that the Commission retain the existing rule, but amend it to include a cost allowance of $9,000. Under this proposal, the existing requirement that applicants

[1] CenturyTel, Embarq, Qwest, and Toledo Telephone Co. (through counsel for the Washington Independent Telephone Association (WITA)) provided data to Staff and Public Counsel. CenturyTel provided data *only* for line extensions over 1/10 of a mile because it does not separately track shorter extensions. Thus, figures in this section do *not* include the distance or cost of any extensions constructed by CenturyTel that were less than 1/10 of a mile. Accordingly, the number of extensions stated may be lower than actual, and the average costs and distances figured may be inaccurately high and long respectively. Additionally, Qwest provided overall data for the last seven years, so figures for that company are based on a seven-year average.

[2] Companies provided this data in October 2007—more recent data has not been made available.

[3] Information from Qwest could not be included in this calculation because it was provided in a different format, i.e. single, overall figures for the last seven years. **[Begin Confidential] XXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXX[End Confidential]**

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make an initial payment up to twenty times their basic monthly service rate would remain.[4] Applicants would also remain responsible for paying the cost of trenching, conduit, or other structures, required for drop wire placement.[5] The applicant would then receive an allowance for the remaining cost, up to $9,000. Accordingly, costs between $360 (the approximate amount of the initial payment) and $9,000 would be the company's responsibility and would be recoverable in rates; individual applicants would be responsible for any costs beyond $9,000.

A cost allowance is the simplest and most effective means of addressing the concerns of all parties—it would create a direct and clear-cut method for controlling overall costs while accommodating the need for extensions. Under this proposal, most applicants would not face prohibitive costs, meaning that most extensions applied for would be built. In 2007, 51 percent of line extensions cost less than $9,000. Under a cost allowance, these would all be constructed with customers paying only the initial fee. Of the remaining extensions, most were not significantly more than $9,000; this is demonstrated by the fact that the average cost of line extensions in 2007 was less than $11,700.[6] Thus, an additional group of applicants could obtain extensions for not much more than the initial fee.

At the same time, the cost borne by companies, and ultimately the general body of ratepayers, would fall. For example, if the cost allowance had been in place in 2007, CenturyTel's total cost would have **[Begin Confidential] XXXXXXXXXXXXXXXXXXXX**

[4] WAC 480-01-071(3)(a). For the purpose of these comments, Public Counsel has assumed an average initial charge of $360 based on an average monthly basic charge of $18.
[5] WAC 480-01-071(3)(b).
[6] Moreover, the average cost of extensions is trending downwards. The average cost in 2006 was $13,300; in 2005 it was even higher.

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[End Confidential]. Similarly, Toledo and Embarq's costs would have **[Begin Confidential] XXXXXXXXXXXXXXXXXXXXXXXXX [End Confidential]**.[7]

In sum, a cost allowance would shift costs from the companies, and ultimately the general body of ratepayers, to those few individuals requesting expensive extensions.[8]

IV. COMMENTS AND AMENDMENTS

Public Counsel recommends the cost allowance approach discussed above as preferable to the proposed draft rules. However, if the Commission wishes to adopt the draft rules, we recommend the following amendments to more equitably balance the interests involved.

A. Draft WAC 480-120-071(2): Time deadlines for extension of service.

Where applicants are responsible for some of the cost, i.e. any time the extension is above the 1/10 of a mile allowance, the draft rules require companies to extend service within 12 months from the time that the applicant meets the company's payment terms. However, companies can set any payment terms they wish and could require an applicant to pay in full before it extends service. This provision conflicts with the rule's requirement that service be extended "in a timely manner" because, for applicants who cannot pay the full cost immediately, it may mean going without phone service for much longer than one year.

Accordingly, the Commission should consider requiring companies to make reasonable payment plans available to all applicants and begin the running of the 12 month deadline upon

[7] It is not possible to calculate a similar number for Qwest because the company only provided seven-year average data.

[8] This proposal would also likely reduce, if not eliminate, the need for costly and time-consuming petitions which some companies claim are necessary under the current rule.

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substantial, partial payment. Section (2) could be amended to read:

> (iv) When the company bills for construction charges, ~~including extraordinary costs under subsection (3)(b) of this section,~~ it must make a payment plan, allowing payment on a reasonable schedule, available to the applicant. The company must complete the extension and provide new tariffed residential basic local exchange service within twelve months after the applicant ~~meets the payment terms~~ pays an initial fee set by the company.~~established by the company.(e.g., payment in full, partial payment on a schedule).~~ However, in no case may a company require an initial fee of more than twenty times the applicant's basic monthly service rate exclusive of all fees, taxes, or other charges. If there are multiple applicants under subsection (3) of this section, each applicant may be required to pay the initial fee established by the company or pay the amount described above. ~~then all applicants must meet the payment terms established by the company.~~

B. Draft WAC 480-120-071(3)(a): Length of allowance.

The draft rules require companies to provide line extensions of 1/10 of a mile or less to applicants at no charge. This allowance is only about one-quarter the average length of line extensions built in 2007.[9] Moreover, the data provided by two of the companies listed above shows only one line extension in 2007 that was less than 1/10 of a mile.[10] The data from 2006 shows no extensions under 1/10 of a mile.[11] It appears, therefore, that virtually all applicants would pay more for extensions under the draft rules than under the existing rule.[12] For most applicants, the cost would be significant—for limited or moderate income applicants, the cost could be prohibitive.

The Commission should consider increasing the distance of the allowance. Setting the allowance at 2,000 feet would still result in lowering the costs that companies are currently responsible for under the existing rule because it would place the extraordinary cost of long

[9] When data from previous years is included, the 1/10 of a mile allowance is barely half of the average length of the shortest 20 percent of line extensions.
[10] **[Begin Confidential] XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXXXXXXXXX [End Confidential]**.
[11] *See id.*
[12] All but one of the 102 applicants from 2005 through 2007 would pay more under the draft rules.

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extensions on individual customers. According to the data provided by the four companies listed above, it was longer extensions—those over 2,000 feet—which made up the bulk of the companies' overall costs. Shorter extensions were notably less expensive; almost all extensions shorter than 2,000 feet cost less than $10,000.[13]

C. Draft WAC 480-120-071(4): Applicant access certification.

The draft rules require applicants asking for extensions longer than the 1/10 of a mile allowance to certify that they do not have access to "reliable and adequate service from another telecommunications carrier."[14] (Public Counsel assumes that this includes wireless service.) If they do not, or cannot, the company may refuse to extend service.

This provision raises numerous concerns. First, shifting the burden from companies to applicants to show that comparable service is not available would undermine telecommunications carriers' statutory obligation to provide telephone service to all people.[15] Second, to the extent that this provision forces a customer to use wireless in lieu of wireline, it is inconsistent with the Commission's determination that wireless service is not comparable to wireline.[16]

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[13] These calculations do not include data from Qwest because it provided only seven-year averages. Also, as mentioned above, it may be that CenturyTel's data does not include extensions of less than 1/10 of a mile.

[14] The same problems apply to Subsection (4)(b)(iii), which places the burden of proof on the applicant when the applicant appeals the company's determination.

[15] RCW 80.36.090 (stating "[e]very telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded").

[16] *See WUTC v. Inland Telephone Company*, Docket No. UT-050606, Order 09, ¶39-40 (rejecting Inland's argument that relieving it of its obligation to serve would not create a public harm because three wireless carriers provided service in its service area and stating, "[w]e find . . . that ETC provision of wireless service is not the equivalent of incumbent wireline service.") *See also In the Matter of High-Cost Universal Service Support, Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, FCC 08-4, Notice of Proposed Rulemaking (NPRM), released January 29, 2008, ¶¶9-10. In this NPRM, the FCC observed that "rather than providing a complete substitute for traditional wireline service…wireless competitive ETCs largely provide mobile wireless telephony service in addition to a customer's existing wireline service." The FCC went on to note that

Third, requiring each customer to make such a showing is an unreasonably burdensome expectation, as well as cost inefficient.[17] It is likely that many individuals would not know how to make such a determination. Further, they might have to subscribe to all the various *possible* cell phone service just to test for service at their location. Conversely, companies already have the necessary equipment, familiarity with the system, and technical expertise to better answer this question than customers would. Companies could also include protocol in filed tariffs which could allow for uniform determinations.

Finally, it is unclear why a certification provision for applications over 1/10 of a mile is necessary. Through the distance allowance, the draft rules assign all costs of extensions beyond the 1/10 of a mile allowance to the applicant, so longer extensions create no additional cost to companies.

In light of these myriad concerns, Public Counsel recommends that section (4) be deleted.[18]

D. Draft WAC 480-120-071(7): Customer billing.

It is important that applicants have a choice whether or not to use a company's services for construction of supporting structures or trenches. If the cost of proposed construction of supporting structures or trenches is included with a statement of the cost of the actual extension, it is possible applicants will not differentiate between optional and required costs. Thus, subsection (7)(a)(i) should specify that a company's offer to construct supporting structures and dig trenches must be clearly separated from billing of mandatory costs that are in excess of the

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"[b]ecause the majority of households do not view wireline and wireless services to be direct substitutes, many households subscribe to both services…[.]"

[17] Many other practical concerns arise over requiring individual applicants to test for alternative service. There are currently no protocols for testing—would applicants have to devise their own?

[18] If Section (4) is deleted, those sections that reference the applicant certification would also have to be amended or deleted. This includes (2)(ii) and (iii).

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allowance. To further ensure that applicants have a meaningful choice, subsection (7)(a)(ii) should include a statement that the company's construction specifications should be reasonable. These subsections may be amended to read:

> (i) . . . . The company may offer to construct supporting structures and dig trenches and may charge for those services, but the tariff may not require that applicants use only company services to construct supporting structures and dig trenches. The company may not submit an offer to construct with the "bill for construction" required under (2)(b)(iii), or any other billing statement. The offer must clearly state that it is purely an offer, not a mandatory cost, and that the applicant may chose to employ a different company for construction services.
> (ii) The company tariff may require that all supporting structures required for placement of company-provided drop wire from the applicant's property line to the premises are placed in accordance with company construction specifications. These specifications must be reasonable in light of the company's existing guidelines and policies.

V. CONCLUSION

Public Counsel respectfully recommends that, rather than undertaking a wholesale revision, the Commission retain the existing rule and amend it to include a cost allowance. A cost allowance is the simplest and most effective means of addressing the concerns of all parties—it would reduce the cost of extensions borne by companies, and ultimately by the general body of ratepayers, while allowing for the construction of most extensions. Alternatively, if the Commission adopts the draft rules, Public Counsel recommends that they be amended as discussed above to more equitably balance the interests involved.

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