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September 24, 1999

VIA E-MAIL AND U.S. MAIL

Carole Washburn
WUTC
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PO Box 47250
Olympia, WA 98504-7250

RE: Telecommunications Rulemaking - Docket No. UT-990146

Dear Ms. Washburn:

Enclosed please find an original plus ten copies of Public Counsel comments for filing in the above case.

Very truly yours,

SIMON J. FFITCH
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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

September 24, 1999

Public Counsel files these comments in response to industry comments and as a follow-up to the workshops. We look forward to working with staff and all stakeholders. Given the changes occurring in telecommunications, this is not the time to weaken or eliminate longstanding rules that protect consumers. It is our objective is to maintain adequate protections for Washington's consumers.

Public Counsel's comments will proceed according to the designations provided in the stakeholder workshop. Presuming no significant policy or consumer protection changes in categories A (Small Semantic Changes), D (Delete), or E (No Change), we will defer comments on rules in those categories until after staff completes a draft proposal. These initial comments

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will focus upon consumer protection issues in categories B (Substantial Policy Changes) and service and obligation to serve issues in category C (Service Rules). Comments on service quality will be provided in a separate filing.

It is Public Counsel's understanding that rules designated for the service and obligation to serve category (C) will be more thoroughly addressed once issues pending in the obligation to serve docket are resolved. Thus our comments on those sections are preliminary and subject to progress in the obligation to serve docket. In general, staff should ensure that nothing in the current rulemaking would deprive consumers in any region, including low-income, rural and other high-cost areas, from access to basic and advanced telecommunications and information services that are reasonably comparable to urban offerings in terms of service and rates. Any policy that effectively restricts access to advanced telecommunications services will only widen current disparities of opportunity in Washington, where a great divide between urban wealth and rural poverty already exists. Obligation to serve and disconnection rules should be carefully crafted to ensure that vulnerable customers and regions are provided with a sufficient measure of access to essential services and technologies. Public Counsel intends to submit more detailed language suggestions once staff's initial proposal is completed.

WAC 480-120-022/023/024/025/026 Competitive Classification Issues

Regulation should be commensurate with actual market power. Company requests that LECs be automatically allowed, on a competitive basis, to offer services equivalent to those

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offered by CLECs would in many instances allow LECs to utilize the power of incumbency and name recognition to consistently squash competition. RCW 80.36.320 states that a company faces "effective competition" when it is found "that customers have reasonably available alternatives and that the service is not provided to a significant captive customer base." A new participant offering service or some aspect of service is usually subject to significant competition from dominant and incumbent LECs and other competitors. Yet LECs offering equivalent services to their captive customers face little actual competition from most competitors. If LECs faced significant competition, companies that provide quality services at competitive prices would be better able to draw a higher share of customers away from incumbents than is now the case. Public Counsel recommends that the existing rule language be retained, but that provisions be added to require a consideration of whether competition is sufficient to constrain price.

Determinations of "competitive" telecommunications services and waivers should continue to be made on a company by company basis. Moreover, as held in US West Communications, Inc. v. Washington Utilities and Transp. Com'n, 86 Wash.App. 719, 937 P.2d 1326 (1997), the burden of proof should remain on companies to demonstrate that under actual circumstances the services offered are indeed subject to effective competition.

WAC 480-129-041 Availability of Information

Non-biased and neutral education materials required in current rules should be

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maintained or enhanced. In addition, Public Counsel recommends that a company providing local service to a customer that wishes to also provide that customer with toll service must first disclose that the customer may choose among alternative carriers.

WAC 480-129-042 Directory Service

The rule's current requirement that directory companies publish information about competing providers is valuable. It should be made consistent with the FCC's August 25, 1999 ruling that requires companies to share directory listing data with competitors. The FCC recommended charges of 4 cents per subscriber listing and 6 cents for updates. Furthermore, language should be clarified to ensure that companies providing directory assistance services are required to provide access to all listed customer names and numbers in the geographic calling area, not just customers of the company offering the service. Public Counsel continues to be concerned about the quality of directory assistance, especially in light of increasing prices.

WAC 480-120-051 Availability of Service—Application for and Installation of Service

Company arguments that the competitive market, which has failed thus far to provide significant inroads into the traditional LEC captive customer base, is sufficient to ensure appropriate levels of consumer protection and satisfaction should be given little credence. Effective local service competition for residential customers does not exist. Customers do not have reasonably available alternatives merely because competitors might hypothetically be able

to serve them. LECs continue to benefit from the tremendous advantages of their historic incumbency and monopoly, and actual entry into the market remains difficult and costly for potential competitors.

All providers should be required to provide a written confirmation of key contractual terms and obligations within a week of service initiation. Each service, its price, terms and rates for lifeline service, late fees and cancellation fees should be included. Customers should be able to cancel, without charge, if the product delivered does not match the expectations created by marketing rhetoric.

Public Counsel supports the uniform establishment of rigorous and accurate scheduling obligations, with payments to customers when companies fail to meet scheduled appointments. Current service quality thresholds for completion of primary exchange access line installation and fulfillment of appointment obligations should be maintained and strengthened. If a problem with hook-up occurs companies should be required to provide some means of temporary or cellular service until the requested service can be obtained. Alternatively, at the customer's discretion, companies could be required to apply a significant credit to the customer's account

WAC 480-120-056 Credit

Public Counsel opposes company requests to use credit reporting agencies, or other credit histories not related to telephone utility payment history, to establish a customer's credit worthiness. Current mechanisms exist in the rules to allow a company to determine whether a

deposit is required. These mechanisms have a demonstrated record. Conversely, there are considerable concerns about the accuracy of credit bureau data, and the linkage between utility bill payment and credit rating is dubious at best.

Other public utility commissions have expressly denied regulated telephone utilities the use of credit bureau reports. The Vermont Commission rejected the use of the Equifax credit agency to determine credit worthiness and found credit reports to be "invasive" and not connected to proper criteria. Vermont's Commission also refused to let telephone utilities refuse credit and demand a deposit if a customer could show no bank account overdrafts for a year. *In re* Vermont Telephone Co., 182 PUR4th 63 (VT. PSB 1997). A comparable poohibition would be a positive addition to the Washington rule. Similarly, the Montana Public Service Commission denied U.S. West's request for a one-year trial using commercially available consumer credit reports. The Commission found "no information" to demonstrates that a correlation exists "between a customer's non-utility bill payment history and the likelihood of utility bill payment." *In re* U.S. West Communication's Request for a Temporary Waiver of ARM 38.5.1104, No. N-93-46 (Mont. Pub. Serv. Comm'n Nov 29, 1993) (Clearinghouse No. 49,602).

Any consideration of utility use of credit reports should be preceded by a thorough investigation into utility compliance obligations and exemptions with regard to existing credit and consumer protections. The current rules provide affirmative obligations in the application process with which companies must comply. These WAC provisions ensure that customers are protected. Existing consumer credit protections outside WAC provisions, however, do not offer sufficient

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assurance that companies will not be able to discriminatorily deny or condition the issuance of credit. For instance, regulated utilities are exempted from a number of important protections in provisions such as Washington's Consumer Protection Act (CPA). Though they are prohibited from engaging in discriminatory credit practices, utilities are given significant exemptions from important sections of the Equal Credit Opportunity Act (ECOA) as well. Thus, allowing regulated companies to use credit reports might in some instances leave regulated utility customers with less consumer and credit protection than customers of unregulated entities enjoy.

Even where overarching protections are applicable to utility customers they are often ineffective. Because credit discrimination tends to be silent and invisible, and because ECOA and other enforcement schemes are inefficient and difficult to implement, most credit discrimination is never challenged. Despite the far-reaching remedies available, credit discrimination laws have not been utilized aggressively. Subjecting utility customers to the burdens and potentially discriminatory risks of credit reports is simply not warranted.

It is questionable public policy as well. For instance, the inappropriate use of credit tools could inhibit the extension of advanced telecommunications to all communities in the state. As other credit contexts have shown, apparently neutral credit requirements have frequently resulted in the effective redlining and refusal of credit for certain areas or neighborhoods. It is especially important to avoid such adverse effects in the current telecommunications environment where access to advanced telecommunication services has becoming increasingly essential to educational fairness and economic opportunity. Expressly limiting the use of credit reports to determine whether

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applicants can receive such essential services is an important step toward the goal of avoiding a system in which poor and rural customers are deprived of advanced telecommunication opportunities enjoyed by more affluent urban customers.

WAC 480-120-056 Deposits

Limitations on deposit amounts equivalent to those in current rules for LECs should apply to all providers of basic service. Any contemplation of changes to deposit requirements or processes should first consider the impact on access to just and affordable telephone service as required under section 254(b)(1) of the Telecommunications Act of 1996. RCW 80.36.300 likewise enunciates Washington's telecommunications policy goal of preserving affordable universal service.

A more effective use of WTAP deposit and rate relief would bring Washington's telecommunications system closer to the twin goals of affordable universal service and higher telephone penetration rates. Accordingly, this docket should explore ways to encourage companies and the Department of Social and Health Services to work together to increase WTAP participation. Despite the fact that WTAP fully reimburses companies for deposit and rate assistance and significantly mitigates companies' default risk with regard to low-income customers, anticipated increases in WTAP participation have not been realized. In fact, even though the number of eligible households increased from fiscal year 1997 to fiscal year 1998, the number of participants declined. In 1997, 113,000 participants received WTAP assistance out of

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384,000 potentially eligible households, a 29 percent participation rate. In fiscal year 1998, only 96,853 households of 435,311 eligible households received WTAP assistance, reflecting a declining participation rate of 22 percent. Washington Telephone Assistance Project: A Report to the Legislature of the Eleventh Year of Program Operation: July 1, 1997 through June 30, 1998, Department of Social and Health Services, Division of Assistance Programs, December 1998, i, Table A.

Companies should be making a real commitment to accelerated WTAP participation, not higher deposit amounts. Researchers in a Rutgers University study performed for Bell Atlantic concluded that initial deposit payments undermine universal service goals because they deprive some consumers of the ability to connect to the network. Mueller, M. and Schement, J. R., Universal Service from the Bottom Up: A Profile of Telecommunications Access in Camden, New Jersey. The Information Society 12, 3 (August 1996). Deposit amount increases would result in an excessive burden for the many low-income customers not covered by WTAP. We also, for similar reasons, oppose elimination of exemptions from deposit requirements. Current deposit exemptions and alternatives are valuable and should be retained. These protections provide significant protections to consumers and have not proven to be a substantial burden to companies.

WAC 480-120-061 Refusal of Service

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Public Counsel strongly supports the retention of the current rule entitling customers with a "prior obligation" to a one-time six-month payment arrangement. We recommend that "prior obligation" protections with regard to basic telecommunications services be made parallel to protections for customers of gas and electric utilities. Though access to basic services is generally affordable for most, once customers have been disconnected for nonpayment of other charges the combination of deposit and arrears requirements often constitute an insurmountable obstacle to network reentry. Thus, the goal of universal service is effectively undermined.

"Prior obligation" protections have been the most effective mechanism to protect essential energy services for low-income customers in Washington. While we understand company concerns that some customers might take advantage of this protection to avoid paying arrears, we point out that companies do have other mitigation channels, such as collection, to recover past arrears. Moreover, "prior obligation" has not been shown to be especially burdensome to gas and electric company bottom lines.

Section (5) should be made consistent with provisions in WAC 480-120-121. Public Counsel believes that all applicants should be analyzed on the basis of their merits alone, and not on the basis of premise address or a company employee's discretionary decision regarding the presence of a former customer with arrears at the residence in question. Current language allowing companies to refuse or discontinue service upon "evidence of intent to defraud" provides companies with sufficient protection without infringing upon the due process rights of applicants.

WAC 480-120-081 Discontinuance of Service

Prohibitions against disconnection for nonpayment of unregulated or competitive charges should be maintained because disconnection deprives consumers of an essential service. This is especially true when customers do not have realistic recourse to an alternative basic service provider. In addition, LECs should be prohibited from disconnecting customers for unpaid charges related to the LEC's intraLATA toll charges. Protecting customers against disconnection in all but the most obvious situations of payment evasion is paramount.

Because a customer's local service should not be disconnected for failure to pay unregulated or competitive service charges, staff should ensure that companies do not include overdue amounts for other telephone services on local service disconnection notices. This bill bundling practice coerces customers into making payments that should not be required to keep basic services. Furthermore, customers should be clearly informed that the cancellation of optional non-basic services might allow them to retain basic local service.

Studies estimate that anywhere from two-thirds to three-fourths of all households without telephone service have had service in the past but were unable to keep it. Data collected indicates that most marginal users are driven off the telephone network by usage-related costs such as long distance tolls, collect calls, credit card calls, and optional features rather than access-related costs. Once disconnected because of large usage-related bills, low-income households often face an insurmountable barrier to basic telephone service. Not only must they pay off the delinquent bill, but because they will be classified as bad credit risks they will be

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required to pay a deposit to re-establish service. Combined, these policies undermine universal service goals and constrict penetration rates for essential telephone service. See Mueller, M., Universal Service: Interconnection, Competition and Monopoly in the Making of the American Telephone System, MIT Press, Cambridge, Mass., 1996; Mueller M. and Schement, J. R., Universal Service from the Bottom Up: A Profile of Telecommunications Access in Camden, New Jersey. The Information Society 12, 3 (August 1996). In order to ensure that basic phone service is maintained and disconnection avoided to the extent possible, customer payments should be allocated first to past-due and current local exchange service. Once again, the disconnection of monopoly services is a drastic method of debt collection, is contrary to universal service goals, and should be reserved only for failures to pay basic service provider charges regulated by the commission.

Current provisions allowing customers to avoid disconnection by paying a delinquent amount at a payment agency, or by paying a telecommunications employee at the service address, are important consumer protections and should be retained. Public Counsel recommends that section (6) be amended to clearly provide that a customer who informs a company of such payment shall not be disconnected or labeled delinquent during any interval between when they pay or inform of payment and when the company processes or verifies payment. In addition, to protect customers who pay in time but fail to call as required, a mandatory grace period should be required which takes into account the longest possible lag-time between payment agency payment and a company's actual posting of that payment to the account.

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Public Counsel recommends that both incumbent and competitive local providers be required to offer customers reasonable extended payment arrangements of a sufficient duration to provide meaningful temporary relief. Payment arrangements should not be left to the carrier's discretion, especially with regard to retention of basic dial tone services. Such discretion could lead to discriminatory treatment. Accepting lower payments over a longer duration often provides a more cost-effective approach for companies than disconnecting and pursuing collection anyway.

Current notice and verification provisions should not be diminished. They ensure that customers are notified of a problem and provided a channel for response, an essential aspect of due process and basic fairness. Finally, LEC requests for the authority to hold customers captive by refusing to transfer them to a competitor until all past due charges are paid should be denied. Such power would stifle competition. Established procedures allowing companies to collect customer arrears are sufficient.

WAC 480-120-087 Telephone Solicitation

Public Counsel supports stronger provisions allowing customers to prevent unwanted telephone solicitations. Ideally, customers could place their listings on a statewide "do not call" list that solicitors would be required to consult. Alternatively, a provision similar to one in

Oregon should be considered. Oregon requires companies to provide customers the option of having their directory listings designated with a "do not call" mark.

Washington's RCW 80.36.390 currently requires designated telemarketers to honor a customer's "don't call back" request and grants enforcement authority to the Attorney General. WAC 480-120-087 requires telecommunications companies to inform customers, via directory notice, that protections against solicitation are available. A rule or tariff provision creating a "do not call" list or requiring directory markings upon customer request would be consistent with the legislature's stated finding and intent that "regulatory action" should protect telephone customers' "legitimate privacy rights" to "reject unwanted telephone solicitations." RCW 80.36.390. Before calling any residential number in Washington, solicitors should be required to consult customer designations. Any subscriber listings shared outside a company should include "do not call" designations.

WAC 480-120-101 Complaints and Disputes

Adequate complaint mechanisms need to be preserved as the competitive telecommunications market emerges. The provision requiring company response to complaints within two days should be maintained, and notification of the complaint process should be included at the initiation of service as well as on any adverse notice calling for disconnection or deposit. Public Counsel recommends extending the record-keeping requirement to three years. Three years of documentation would help staff in complaint investigation by revealing patterns of

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inadequate service or habitually petty complaints. One year is insufficient. In addition, a longer term of record-keeping would provide staff more useful data from which to ascertain service trends and set sufficient service quality thresholds.

WAC 480-120-106 Form of Bills

The rules should ensure that meaningful bill disclosures allow customers to readily compare price and service offers. The cost for basic service should be clearly itemized and attendant protections against basic service disconnection clearly set forth on each customer's bill. Notice of rate increases or changes in terms should be clearly provided at least one month prior to any change.

Many companies, especially those that do not benefit from careful comparisons, offer price schemes that evade comparability. Meaningful competition is fostered by customer opportunities to make meaningful service comparisons. Public Counsel recommends that uniform per unit price disclosures be required to achieve this goal. This would allow consumers to shop for a plan that best fits their needs. Rates should be easily ascertainable, with information setting out for example the cost per minute rate for days, evenings and weekends. Unit costs should include the impact of monthly charges, call set up fees, and any other charge that affects the unit rate. Billing increments (six second, rounded up to next full minute, etc…), surcharges, and a summary of monthly calling patterns should be clearly disclosed as well.

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WAC 480-120-121 Responsibility for Delinquent Accounts

Current language prohibiting companies from collecting a deposit merely because a prior customer with arrears lived at the residence should be retained. Public Counsel believes that current language allowing companies to refuse or discontinue service where "evidence of intent to defraud" exists provides companies with sufficient protection against the fraudulent gaming of service. Provisions in WAC 480-120-061, where contrary to this rule, should be rendered consistent with the protections in this rule. Absent compelling evidence that premise or roommate service abuses constitute a significant burden to companies, all applicants should be analyzed on the basis of their merits alone, not on the basis of their address or a company employee's discretionary decisions regarding roommate living arrangements at the residence in question.

WAC 480-120-510 Business Offices

Customer concerns about diminishing access to actual customer service agents need to be thoughtfully addressed in these proceedings. Many Washington telecommunications consumers have a recent and unpleasant history of reductions in local service quality. This creates a considerable reluctance to embrace reductions in consumer access to problem-solving personnel. Current rules requiring a sufficient number of payment agency locations according to given per capita thresholds should be maintained. Also in regard to payment agencies, Public Counsel is particularly concerned about customers who wish to pay their bill immediately to avoid

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disconnection. Opportunities to do so should not be diminished, and customers should be promptly notified of any changes in payment location. Additionally, Public Counsel supports provisions ensuring that customers will not be disconnected during any interval between when they have paid and when the company processes that payment.

CONCLUSION

Public Counsel appreciates this opportunity to participate and looks forward to further commission proceedings on this matter. Current telecommunications rules have generally provided Washington's consumers with adequate service, reasonable rates and important consumer protections. These protections should be retained in any effort to reform the telecommunications system or clarify language in current rules. Throughout this rulemaking process, the ultimate goal should be to ensure that end results benefit rather than harm Washington's consumers.

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