

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of Request for Comment
on Consideration of an Emergency
Rule

DOCKET NO. UT-030860

**Comments of
Public Counsel
Attorney General of Washington**

June 9, 2003

Public Counsel files these comments in response to the Commission's June 5, 2003 Notice of Opportunity to File Comments. These represent our initial comments on the six issues identified in the June 5, 2003 *Request for Comment on Consideration of an Emergency Rule-Opportunity to Comment No Later than Noon, Monday, June 9, 2003*.

These comments do not directly address the Petitions for Waiver filed by BG Enterprises, Inc., d/b/a Grizzly Telephone and Stan Efferding d/b/a Vilaire (an additional Petition is expected to be filed shortly by Tel West Communications, LLC). Public Counsel is aware of the issues raised by the Petitioners and the concerns expressed therein. However, our focus is the interests of the customers whom they serve and the potential public safety consequences of granting the Petitions as filed. Due to the broad nature of the waivers sought by the Petitioners we cannot support them as filed. We look forward to working with the Commission Staff, the Petitioners, and all interested parties in reaching a resolution of these issues which protect the customers being served while addressing the concerns raised by the Petitioners. We plan to attend the Commission's June 11 Open Meeting to participate in the discussion of these issues.

(1) Is there an actual risk that some WTAP eligible customers may lose access to 911 services as a result of an abrupt discontinuation of service?

Public Counsel is concerned that there is a significant risk that some customers may experience a sudden disconnection of telephone service, which may include loss of access to 911 services. We understand that two carriers – Vilaire and Grizzly – have filed petitions with the Commission seeking waivers of certain Commission rules and statutes regarding disconnection (WAC 480-120-081), cessation of service (WAC 480-120-083) and WTAP (RCW 80.36.410-80.36.475).¹ As we discuss below, based on these petitions from Vilaire and Grizzly, it is not clear whether these carriers seek to disconnect all of their WTAP customers, or all of their customers in Washington state. Thus, it may be the case that some non-WTAP customers are at risk of sudden disconnection as well.

(2) How many WTAP eligible customers may be at risk of a sudden cessation of service?

Public Counsel does not have specific information regarding the number of WTAP customers who may be at risk of a sudden cessation of telephone service. According to a June 3, 2003 press release of the Department of Social and Health Services, over 10,210 WTAP customers are served by “higher cost companies (TelWest, Vilaire and Tel Net).”

Public Counsel is concerned that other, non-WTAP customers may also be at risk of sudden cessation of service. The recent petitions filed by Grizzly and Vilaire request an exemption from the Commission’s cessation of service rule (WAC 480-120-083). Upon an initial review of those petitions, we are not clear as to whether these carriers are seeking to disconnect all of their WTAP customers or all of their customers in Washington. The petition

¹ The petition from Vilaire appears to also request exemption from WAC 480-122-020, which requires eligible telecommunications carriers (ETCs) to offer the WTAP rate, and requires non-ETCs to offer the WTAP rate if they serve more than one hundred residential customers in Washington. Public Counsel has also been informally advised that Tel West Communications, LLC expects to file a similar Petition shortly.

from Grizzly indicates that approximately half of Grizzly's 504 Washington customers are non-WTAP customers. Vilaire's petition states that the company has 4,700 Washington customers (page 2) and that they serve 4,700 WTAP customers (page 3), so Vilaire may not serve any non-WTAP customers.

(3) How much time will it take a customer to find and be connected by an alternative local exchange company?

Public Counsel respectfully encourages the Commission, telecommunications carriers, and other stakeholders to consider what actions can be taken to minimize the burden on customers. We understand that Commission Chairwoman Marilyn Showalter has asked Qwest and Verizon to consider waiving their usual credit rules and offer service to any WTAP customers who are disconnected as a result of the DSHS emergency rule regarding carrier reimbursement. To the extent that any customers – WTAP or non-WTAP – face the possibility of sudden disconnection of telephone service, in our view the public interest is best served if those customers are able to receive telephone service from another carrier (with appropriate notice), without any disruption in service. This is critical to ensure access to 911 services. Otherwise, if customers suddenly lose service, it could take several days or weeks before they are able to obtain service from another provider. Moreover, as the Chairwoman has pointed out, some customers may not be able to reconnect with another carrier due to their credit history.

(4) Would a change in the effective date for WAC 480-120-174 assist WTAP eligible customers who may experience discontinuation of service with little or no notice?

Public Counsel supports the Commission's adoption of an emergency rule to change the effective date of WAC 480-120-174 from July 1, 2003 to June 11, 2003. To the extent that customers face sudden disconnection and would like to reconnect service with another provider such as Qwest or Verizon, the new rule provides for a monthly payment plan (one and a half

times the WTAP rate, currently set at \$4), coupled with toll restriction and ancillary services restriction, to facilitate reconnection of service for consumers with a credit obligation.

This new rule (WAC 480-120-174) will only be effective if consumers are aware of their rights provided for in the rule, however. If at all possible, notice should be provided to all WTAP eligible customers who experience a sudden loss of service, to inform them of their rights under WAC 480-120-174. Carriers should inform all WTAP and Tribal Lifeline eligible customers seeking reconnection of their right to enter into a payment plan pursuant to this rule.

(5) What is the number of WTAP customers that may be assisted rapidly in obtaining substitute service by adoption of an emergency rule to change the effective date of WAC 480-120-174 from July 1, 2003 to June 11, 2003?

Public Counsel does not have specific information on this point. We recognize that as currently drafted, this rule applies only to WTAP and Tribal Lifeline eligible customers that were disconnected for nonpayment while they were not participating in WTAP or Tribal Lifeline.

We note that WAC 480-120-174 includes references to WAC 480-120-172, which is currently scheduled to become effective July 1, 2003 as well, so it may be necessary to also change the effective date of that rule.

(6) Does a risk of discontinuation of service to WTAP eligible customers warrant the immediate adoption, amendment, or repeal of a rule necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest?

Public Counsel believes that the potential risk of sudden disconnection of telephone service and loss of 911 services would pose a significant threat to public health, safety, or general welfare. In contrast, the burden on telephone carriers as a result of an emergency rule which moves up the effective date of a rule by 19 days is minimal, particularly since the rule at issue was adopted by the Commission approximately six months ago.