Agenda Date: June 11, 2003
Item Numbers: A6, A9, A10

Dockets: **UT-030867, UT-030879 and UT-030891**
Company: BG Enterprises, d/b/a Grizzly Telephone
Stan Efferding, d/b/a Vilaire Telecommunications
Tel West Communications, LLC

Staff: Robert Shirley, Telecommunications Policy Analyst

Recommendation:
Deny the request for exemptions from WAC 480-120-083, cessation of telecommunications service, and the request for exemption from WAC 480-122-020, obligation to offer WTAP service. Deny the exemptions from WAC 480-120-081 and the requested exemptions from RCW 80.36.410 through 80.36.475.

Background
The WTAP program provides discounted residential local exchange service to eligible low-income persons who request participation in the program. The program participant pays a reduced monthly rate (currently $4.00) for residential local exchange service and the WTAP fund, in combination with a similar federal program, reimburses local exchange companies (LECs) for the discounts provided to the customer. The program is operated by the Department of Social and Health Services (DSHS). The WUTC also has rulemaking authority that it uses to set the statewide lifeline assistance rate (the $4.00 rate) and require participation by local exchange companies that offer residential service.

Since its beginning in 1987, the WTAP program has reimbursed each LEC the difference between the assistance rate and that LEC's normal charge for local exchange service. For example, a residential customer of Qwest would normally pay $12.50 per month plus taxes and fees, but a WTAP participant pays Qwest $4.00 per month and WTAP and federal funds reimburse Qwest the $8.50 difference. A customer of Verizon also pays only $4.00 dollars of the monthly $13.00 local exchange bill and Verizon is reimbursed $9.00.

In the 1990s, competitive local exchange companies began offering residential service. In some cases, these companies charged $50 or more per month for service to customers who, due to unpaid bills, were not entitled to service from Qwest or Verizon. When these companies served a WTAP-eligible customer, the

WTAP program reimbursed the company for the difference between its higher customary rate and the WTAP client rate of $4.00.

On May 30, 2003, DSHS filed an emergency rule with the Code Reviser. The emergency rule made several changes to Chapter 388-273 WAC, Washington telephone assistance program, effective June 1, 2003. The changes included a limit on reimbursement to competitive local exchange companies. The emergency rule limits reimbursement to the amount that WTAP reimburses the incumbent local exchange company in that exchange area. *WAC 388-273-0035.* For all exchange areas, reimbursement is limited to not more than $19.00 for each eligible household. *Id.*

In addition, in a letter to companies dated May 30, 2003, DSHS said it intends to ask the WUTC to raise the WTAP customer payment rate from $4.00 to $8.50 per month.

Reseller Costs and Revenues

The petitioners state that the reduction in revenue resulting from the May 30, 2003, emergency rule will result in companies paying more to provide service than each could collect in revenue from the customer, the federal program, and the state WTAP program combined.[1] BG alleges it could lose as much as $7,662.00 per month; Vilaire alleges it could lose in excess of $100,000 per month; and Tel West alleges it could lose in excess of $200,000 per month.

The petitions of BG and Vilaire explain their expenses for resold service, not UNE-P service. BG provides only resold service to 272 WTAP customers, while Vilaire provides resold service to 800 WTAP customers and UNE-P service to 3,900 WTAP customers. Tel West's petition did not describe its costs for the purchase of Qwest, Sprint and Veizon service for resale, or its cost for UNE-P service from Qwest and Verizon used to serve its 6,200 WTAP customers. Staff determined that the cost of resale service from Qwest is $18.80 per line, per month (after wholesale discounts are taken) and that the maximum combined

[1] All three companies purchase local service from Qwest and/or Verizon and sell that service to their retail customers. In some cases, the companies purchase bundled Qwest or Verizon service at a discount. In other cases, they purchase the "unbundled network element platform" (UNE-P), which includes all of the switching, loop, and transport functions necessary to provide local service.

state, federal and customer revenue under the May 30 emergency rule is $18.50 per line, per month. The net loss is $0.30 per line, per month, before considering overhead and profit.[2]

Another method that competitive local exchange companies can use is the incumbents' networks to provide service to WTAP customers by purchasing the UNE platform. UNE-P prices vary by geographic zone. The average price[3] for UNE-P is lower than the price for resale service in Zones One through Zone Four, and higher than the resale rate in the most rural exchanges, Zone Five. The table below provides a comparison of the revenues available to a company under the May 30 emergency rule and the UNE-P charges of Qwest.

COMPARISON OF QWEST UNE-P PRICES TO WTAP REVENUES
Prices as of June 2003

ZONES	PRICES	AVAILABLE REVENUE
1	$ 9.13[4]	$18.50
2	$14.07	$18.50
3	$15.48	$18.50
4	$17.03	$18.50
5	$21.78	$18.50

A third means by which companies can meet their WTAP obligation is through resale of the incumbent's own WTAP service. Qwest today provides 43 lines to carriers (not to any of the petitioners) at a wholesale discount from the $4.00 WTAP rate paid by customers. With the discount, Qwest charges the competitive local exchange company $3.50 per customer per month, and Qwest collects reimbursement from state and federal sources. The competitive local exchange company charges the customer $4.00, yielding a margin of

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[2] We have determined the price for Qwest only at this time due to time constraints, and it was chosen because it appears to be the supplier for 90% or more of the resold and UNE-P lines.

[3] There is a usage sensitive charge as part of UNE-P; our calculations used the average rate Qwest charges for this usage sensitive portion of the UNE-P rate.

[4] This price is available for service provided from two switches of five Qwest operates in Seattle.

approximately $.50 per customer per month. This margin is likely not sufficient to operate a business that serves WTAP customers exclusively, but it would permit a company to serve the overall residential market and meet its WTAP obligations.

Exemptions

BG Enterprises, Inc., d/b/a Grizzly Telephone (BG), and Stan Efferding, d/b/a Vilaire Telecommunications (Vilaire), and Tel West communications LLC (Tel West) have petitioned the Commission for exemption from several rules related to notice of cessation of service and offering discounted service to WTAP-eligible applicants and customers. The Petitioners contend that the amount of available revenue is insufficient to meet the cost of providing the service itself and cannot provide any contribution to overhead or profit.

Based on the examination of costs and revenue above, Staff believes that the existing arrangement used by the Petitioners does, as they assert, result in a level of revenues that is less than the amount they pay Qwest for the service. However, Staff also believes that the Petitioners can reduce or eliminate this situation by changing their arrangement with Qwest and/or Verizon. If the companies instead use UNE-P and/or resell the incumbent's WTAP service, they will receive a positive margin on their service to WTAP customers. As Staff noted above, the margins are likely not sufficient to make exclusive service to WTAP customers a viable business, but a company that is otherwise offering service to residential customers can meet its WTAP obligations.

Recommendations

Exemption from WAC 480-120-083, requiring thirty days' notice prior to cessation of service. Staff recommends that the exemption be denied. Cessation of service without adequate notice would leave customers without service, and particularly without access to 911 services. The Commission discussed this concern extensively when it adopted WAC 480-120-083 on an emergency basis. At that time, with far fewer customers at risk, the Commission determined that the concern over a sudden cessation of service was sufficiently important to public safety to qualify as an emergency. Staff believes the same conditions exist today. Even if the WUTC were to allow companies to exit the WTAP market, Staff believes those companies should fulfill their obligation to exit with adequate notice to existing customers.

The fact that DSHS changed, on less than 30 days' notice, the reimbursement levels do not, in Staff's view, justify cessation of service to the WTAP customers. In virtually every instance where a company is ceasing service, its own economic interests will be better served by terminating that service as quickly as possible. The WUTC was aware of that interest when it adopted the cessation of service rule, and it decided that exiting companies nonetheless had an obligation to give adequate notice before ceasing service.

Exemption from WAC 480-122-020, requiring companies to offer WTAP at the Commission-established rate. Staff also recommends that the WUTC deny the requests for exemption from the requirement to offer WTAP service. The requirement for all companies to offer WTAP is a fundamental part of universal service, and it permits low-income customers to have the same choices that other customers have with respect to basic local service. To grant the exemption could lead to a form of "redlining;" that is, denial of service based on income. As discussed above, Staff believes that competitive local exchange companies can fulfill this obligation even with the lower reimbursement levels provided by the WTAP program. If those reimbursement levels prove insufficient, the solution should be to adjust those rather than eliminate the requirement to participate.

Exemption from WAC 480-120-081, discontinuance of service. This rule sets out circumstances under which a company may discontinue local telephone service, and the procedures it must follow to do so. It is not necessary for a company to follow this rule if it is taking action pursuant to, and in accordance with, WAC 480-120-083. If the WUTC denies the exemption of WAC 480-122-020, any company that chooses to discontinue service to WTAP customers as a class must cease providing residential telecommunications service and follow WAC 480-120-083. Under that circumstance, Staff believes there is no obligation to follow WAC 480-120-081, and thus no need for an exemption from that section.

Exemption from RCW 80.36.410 through 475, the WTAP statutes. Staff recommends the Commission not address this request if it adopts our recommendations on rule exemptions. Because the rules are based on these statutes and other statutes (e.g., RCW 80.04.010), and because the recommendation is that companies not receive exemptions from rules, it is not necessary to determine if an exemption from these statutes may be granted under RCW 80.36.320 or under other authority delegated to the Commission.