August 24, 2007

Carole Washburn
Executive Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

Re: Petition of United Telephone Company of the Northwest d/b/a Embarq for Minimal
        Regulation of Bundled Telecommunications Services
        Docket UT-071575

Dear Ms. Washburn:

        Public Counsel files the following recommendations with respect to all the minimal
regulation dockets. An identical copy of this letter is being provided for separate filing in each
docket. Counsel for each petitioner has been served with a copy of the letter.

        Public Counsel respectfully recommends that the petitions not be granted at the open
meeting on August 29, 2007, for the following reasons:

- The petitions are not supported by any record evidence upon which the
  Commission can base the findings required by the statute.

- The petitions do not seek minimal regulation of specific services, only
  categories of services and unknown future services.

- Some of the waivers requested are not in the public interest.

Public Counsel is not requesting that these petitions be set for hearing at this time. These
petitions could be granted in modified form if the following issues have been addressed.

1.   **The petitions are not supported by evidence upon which the Commission can base necessary statutory findings.**

The new statute under which the petitions are filed requires, in summary, that the Commission shall grant a petition for minimal regulation where non-competitive services are separately available, where the price of the bundle is equal to or greater than underlying cost, and where the availability and price of the stand-alone service is properly displayed. Ch. 26, Laws of 2007, Section 2 (1)(a)-(c). In order to grant a petition, the Commission must make findings on each of these elements. None of the petitions, however, provides sufficient information to the Commission to make these findings, nor do they attempt to do so.

As noted below, specific bundles are only mentioned as examples. The individual component services of the examples are listed, but the petitions do not state which are the tariffed or non-competitive services and which are competitive. The status of the individual services is not identified. The petition does not explain where the example services fit into the matrix.

Little or no information is provided to the Commission regarding the price of the bundles or component services. No information is provided regarding underlying costs. As a result, the Commission has no basis to determine that the cost coverage requirement of Section 2 (1)(b) is met.

The petitions also do not provide any record information to allow for a finding that the availability and price of stand-alone services is displayed on the Commission's website. This is an important provision necessary to ensure that customer are fully informed and aware of their options and not improperly migrated to bundles and packages through marketing practices.

The ability of the Commission to make the necessary findings of fact is further hampered by the casting of the petitions in generic terms. The petitions do not request a specific finding with respect to any individual bundle or package.

2.   **The statute does not contemplate petitions for generic categories of services.**

All of the petitions seek minimal regulation of categories of services as described in tables. Although examples are given, the request is for any service, including those not specified in the petition, that fits in the category described in the matrix in the petition. The statute does not appear to authorize this type of broad generic petition. The new provisions of RCW 80.36.330 adopted in Chapter 26, Laws of 2007, Section 2, provide that a non-competitive telecommunications company "may petition to have packages or bundles of services *it offers* be subject to minimal regulation." (emphasis added). Section 2(1)(a) requires that "*each non-competitive service* in the package be separately and readily available to customers at fair, just, and reasonable prices" and that "the price of *the package or bundle* is equal to or greater than the cost for tariffed services." Thus, the statute by its terms contemplates that the request relate to bundles of identified services. There is no reference to requests for categories, types, or classes

of services. This makes sense, since the legislature could have simply adopted a matrix of the type contained in the petitions and pre-approved minimal regulation for such services.

Not only do the petitions seek minimal regulation for unspecified existing bundles, they seek this new status for all "future" bundles and packages introduced thereafter. This has the effect of allowing companies to avoid the petition requirements of the statute altogether for any future bundle. The Commission is being asked to pre-approve future bundles and packages sight unseen.   The statute does not expressly or implicitly allow a company to file one petition to achieve minimal regulation for all conceivable bundles or packages that may ever be devised now or in the future. The phrase "it offers" in Section 2(1) does not read "it will offer" or "it may offer" or "it could offer."   The petitions should be amended to seek minimal regulation for specified bundles and packages of service.

3.   The waivers sought are not in the public interest.

Public Counsel recommends that the Commission deny three of the requests for waiver of regulatory requirements as not in the public interest. As a general matter, none of the petitions explain the waiver requests or provide any justifying rationale.

a.   WAC 480-120-103(1)(a) --- Applications for service

WAC 480-120-103(1)(a) provides that when contacted by an applicant for telecommunications service, a company must "accept and process applications when an applicant for service for a particular location has met all tariff or price list requirements and applicable commission rules." This section is part of the broader rules on application for and establishment of service. The specific requirement to accept and process an application is a key part of the basic obligation to serve. Tariff and price list requirements are to be looked at, if applicable, but the absence of price lists does not necessitate waiver of the regulation. If the intent is to give a carrier the ability to now reject applications for packaged or bundled service at its own discretion, that would be a violation of the obligation to serve and goes beyond anything contemplated in the statute.

b.   RCW 80.36.150 -- Contracts

RCW 80.36.150 addresses the situation where carriers provide service to customers under contract rather than under tariff or price list. The statute provides a number of protections for consumers including term requirements, enforceability, and a cost test. RCW 80.36.150(3) and (4). To date, contracts have not been used extensively for many residential market services by regulated carriers. Their use in the wireless sector, however, has generated many complaints from consumers about termination costs, onerous conditions, and anti-competitive effects. The petitions provide no support whatever for the request to waive this statute or to remove the protections for customers purchasing under contract.

c.   WAC 480-120-161 -- Form of bills

In general the "form of bills" rules address bill frequency, length of time for payment, electronic billing, bill organization, a description of billed charges, charges for which service can be discontinued, itemization, method of payment, billing companies, and crediting of payments. These areas cover a significant part of the company-customer relationship once service has been established.   Many important protections would be lost.

For example, a waiver would remove the requirement that if a bill contains charges for more than just basic service, it "must distinguish between charges for which nonpayment will result in loss of basic service." This rule is an essential companion to WAC 480-120-172(4) which prohibits companies from terminating basic service for nonpayment of ancillary or interexchange services.

Just a few of the other important provisions that would no longer apply include:

- Right to a monthly bill. WAC 480-120-161(10);

- Company can bill only for authorized charges (anti-cramming protection) WAC 480-120-161(4);

- Brief, clear, non-misleading, plain language description of each service;

- Calculation of time or distance charges for calls and calculation of any credit or other account adjustment; and

- Companies must allow different payment methods (cash, money order, personal check).

As with the other waiver requests, no explanation or justification is offered for waiving these requirements. When read together with paragraph 6 of the petitions, regarding Consumer Protection Act jurisdiction, it appears the intent is that customers who purchase bundles or packages effectively lose many of the protections of the existing law, and have only the more limited range of remedies available under the CPA.   Thus, a bundled service customer who experiences cramming would apparently not be able to seek assistance from the Commission under its rules, while his neighbor who was "crammed" but only purchased tariffed services on a stand-alone basis would still have a remedy.   This waiver request is not in the public interest.

In conclusion, Public Counsel respectfully recommends that the Commission not approve the petitions in the current form, that it require the companies to amend to request minimal regulation of specific services and to provide adequate supporting information for the record.

The statutes and regulations listed above should not be waived in connection with any grant of minimal regulation unless further compelling justification is provided to show they are "no longer necessary to protect public interest." Section 2(3).

Sincerely,

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