**BEFORE THE WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION**

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| Corrections and Changes in Rules in Chapter 480-120 WAC and Chapter 480-80 WAC, Relating to Telecommunications | ) ) ) | DOCKET NO. UT-040015 |

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**AT&T'S COMMENTS**

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Pursuant to the Washington Utilities and Transportation Commission's ("Commission's") June 9, 2004, Notice of Opportunity to File Written Comments, AT&T Communications of the Pacific Northwest, Inc, TCG Seattle and TCG Oregon (collectively "AT&T") hereby submit these Comments in the above-captioned rulemaking. AT&T thanks the Commission for this opportunity to review the rules at issue and discuss the necessary adjustments thereto.

**COMMENTS BY RULE**

## I. Telco-Related Rules

AT&T's concerns with the Telecommunications rules are as follows:

### A. WAC 480-120-021 Definitions

In the definitions section, the Commission has two definitions that are particularly troubling. They are as follows with Staff's proposed clarification added:

> **"Class A company"** means a local exchange company with two percent or more of the access lines within the state of Washington. The method of determining whether a company is a Class A company is specified in WAC 480-120-026 (Classification of local exchange companies as Class A or Class B).
>
> **"Class B company"** means a local exchange company with less than two percent of the access lines within the state of Washington. The method of determining whether a company is a Class A company is specified in WAC 480-120-026 (Classification of local exchange companies as Class A or Class B).

As discussed in prior proceedings, these definitions sweep successful competitors into service quality reporting requirements that should only be placed upon dominant or monopoly companies. The imposition of such regulatory burdens upon competitors create barriers to entry and unnecessarily increase the cost of doing business upon the very entities that are struggling to survive and compete with the dominant incumbents who have most of the customers and consequently revenues in the State. The Washington Legislature has clearly recognized that parity of regulation between incumbents and competitors is not the goal. Why then, should this Commission regulate competitors as though they were incumbents? AT&T asks that this definition exclude competitors.

### B. WAC 480-120-026 Classification of Local Exchange Companies

As with the definitions, AT&T is likewise concerned with WAC 480-120-026. With Staff's proposals it reads as follows:

> **WAC 480-120-026 Classification of local exchange companies as Class A or Class B.** (1) Each local exchange company is classified as a Class A company or a Class B company, based on the number of access lines it provides to Washington state customers.
> (2) The classification of a company as Class A or Class B is made without respect to the company's classification as a competitive company under RCW 80.36.320.
> (3) For purposes of classifying a company as Class A or Class B, the number of access lines served by the local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.
> (4) Any company whose classification as Class A or Class B changes, due to a change in the number of access lines served, a change in affiliate relationships, or other reason, must promptly notify the commission secretary of the change in classification.
> (5) By July 1 of each year, the commission will publish on its web site the total number of access lines served by local exchange companies in Washington, based on information reported by companies for the previous calendar year, and a calculation of the two-percent threshold.

AT&T incorporates its comments from above here. And notes further that the Commission should ask why Staff wishes to regulate competitors as though they were incumbents.

### C. WAC 480-120-122 Establishing Credit – Residential Service

First, AT&T is concerned with subsection (1) of this rule. It reads as follows:

> (1) A local exchange company (LEC) that offers basic service as part of any bundled package of services, the requirements of this subsection apply only to its lowest-priced, flat-rated residential basic service offering. A LEC may require an applicant or customer of residential basic service to pay a local service deposit only if:

It appears that Staff is attempting to attribute a portion of the bundled offer to basic local service such that the deposit amount required is limited to that service. What is not entirely clear is precisely how this attribution operates. Does Staff intend that the LEC look to its stand-alone basic service offering, assuming it has one, to determine the amount of any deposit whether in a bundled offer or otherwise? Alternatively, this subsection could be read to mean that deposits only apply to low-priced, flat rated basic residential service and not bundled offers.

In any event, AT&T suggests that the Commission adopt a rule that is administratively easy to apply such that customers and carriers alike immediately understand the deposit requirements. In the bundled offer environment it is often times very difficult for competitive carriers to disaggregate the offer into its elemental costs because competitors do not—as a general rule—perform costs studies like incumbent carriers traditionally do. If a carrier only offers bundles and no stand-alone basic service, then the task may become even more complex. That said, the Commission should (a) clarify its intent with respect to bundled offers and deposits, and (b) if the deposit limitation does apply to bundles, the Commission should allow carriers that do not offer

basic services outside bundled offers to adopt a reasonable surrogate for stand-alone, flat-rated basic local exchange service upon which to base deposit requirements on such surrogate. That surrogate could be identified in either tariffs or price lists as the amount upon which residential deposit requirements are based.

Second, and as with subsection (1), subsections (4), (5)(a) and (6) also require greater clarity with respect to how one is to calculate the amount attributable to basic service, ancillary services and interexchange services. The rules, with proposed changes, read as follows:

> (4) When a company requests a deposit from an applicant or customer, the amount of the deposit may not exceed two months' customary use for an applicant or customer with previous verifiable service of the same class, or two months' estimated use for an applicant or customer without previous verifiable service. Customary use is calculated using charges for the previous three months' service.
>
> (5) When an applicant or customer is required to pay a basic service deposit or an interexchange deposit, but is unable to pay the entire amount in advance of connection or continuation of service, ~~following will apply~~ the applicant or customer:
>
> (a) ~~The customer may~~ May pay fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months; …
>
> (6) A company may require an applicant or customer to pay a deposit equal to two months' charges for ancillary service before providing or continuing ancillary services.

Subsection (4) presumably applies to interexchange or usage-based ancillary services. Nonetheless, some bundled offers require a flat-fee for not only basic local exchange service, but also a bucket of minutes or "unlimited" long distance calling. It is a difficult challenge, if not impossible, for carriers to apply these deposit requirements in the

context of bundled offers and a sales environment that is moving away from stand-alone service.

Moreover, the staggered payment amounts in subsection (5) that essentially amount to payments of 50 %, 25 % and 25 % of some amount attributable to basic residential service and/or toll service create a costly administrative burden for carriers. People that rent apartments at hundreds of dollars more than those purchasing telephone service receive far less governmental oversight of their deposits than telephone customers paying paltry sums in comparison. Thus, the rules should conform to the reality of increasing costs to services that cannot be competitively priced to accommodate such regulatory burdens. As a remedy, AT&T proposes that the Commission simplify the deposit requirements by merely requiring 50 % of deposit payment prior to installation or continuation of service and 50 % payment one or two months thereafter. Alternatively, AT&T proposes modifying subsection (5) to allow carriers to select the deposit requirements most suited to their service offerings and billing systems. That is, AT&T proposes the following:

> (5) When an applicant or customer is required to pay a basic service deposit or an interexchange deposit, but is unable to pay the entire amount in advance of connection or continuation of service, the carrier must offer the applicant or customer one of the following options at the carrier's discretion:
>
> (a) Payment of fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months; or
>
> (b) Payment of one-third of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months; or
>
> (c) Where technology permits, the customer or applicant may have the option of accepting toll restricted basic service in lieu of payment

> of the deposit. A company must not charge for toll restriction when it is used as an alternative to a deposit.

These proposed selections would allow carriers to "fit" the deposit payments most suited to the services and systems employed by the carriers while still meeting the customer's purported need for staggered payments.

Third, and finally, subsection (6) is not clear in how precisely carriers are to calculate and attribute costs to ancillary services (e.g., features) in a bundled environment or otherwise. Therefore, carriers may need to develop reasonable surrogate prices for such services.

**D. WAC 480-120-133 Response Time During Regular Business Hours**

AT&T concurs in the proposed changes to this rule as they reflect months and months of discussion and cooperative effort between Staff and industry that created rules capable of protecting consumer interests while taking advantage of new technologies aimed at efficiently and quickly directing calls to the appropriate response centers. Staff should be commended for its efforts to create industry consensus on these provisions.

**E. WAC 480-120-147 Changes in Local and Intrastate Toll Service**

As a legal matter, the State's slamming rules must be consistent with the Federal Communications Commission's ("FCC's") rules; more importantly perhaps, those rules should be consistent as a practical matter. Because most telecommunications providers do not simply provide service in one state, they are faced with multiple varying rules in several states, which can ultimately prove to be a tremendous barrier to even offering service at all. Consequently, this Commission's assistance in ensuring consistency will help contain carriers' costs and ensure an environment that invites carriers to offer service while at the same time protecting Washington's consumers. The easiest way to

ensure consistency is to merely adopt or refer to the FCC's rules. The Washington rule that is currently inconsistent with the FCC is cited in relevant part below:

> Subsection (1) states in pertinent part:
>
> (1) **Verification of orders.** A local exchange or intrastate toll carrier that requests on behalf of a customer that the customer's carrier be changed, and that seeks to provide retail services to the customer (submitting carrier), may not submit a change-order for local exchange or intrastate toll service until the order is confirmed in accordance with one of the procedures in (a) through (c) of this subsection:
>
> (a) The company has obtained the customer's written or electronic authorization to submit the order (letter of agency). The letter of agency must be a separate electronic form, located on a separate screen or web page, or a separate written document (or easily separable document) containing only the authorizing language described in (a)(i) through (vi) of this subsection, having the sole purpose of authorizing a telecommunications carrier to initiate a preferred carrier change. *The letter of agency, whether written or electronic, must be signed and dated by the customer of the telephone line(s) requesting the preferred carrier change*. (Emphasis added).

AT&T is particularly concerned with the italicized sentence in subsection (a), above. This portion of the Washington rule is inconsistent with the FCC's rules and inconsistent with the reality that many customers face. The FCC's rules define "subscriber," the individual that may change service, to be any one of the following:

> (h) The term subscriber is any one of the following:
>
> (1) The party identified in the account records of a common carrier as responsible for payment of the telephone bill;
> (2) Any adult person authorized by such party to change telecommunications services or to charge services to the account; or
> (3) Any person contractually or otherwise lawfully authorized to represent such a party.[1]

It has been AT&T's experience that language such as that found in the Washington rule

[1] 47 CFR § 64.1100(h).

often times precludes spouses from changing service, widows[2] from changing service and adult children tending to elderly parents from changing service, among others. In general, these individuals and others are typically authorized to deal with the telecommunications company and account. Under the Washington rule, none of these individuals could address any issues concerning the accounts. Because AT&T believes that such limitation was not likely the actual intent of the Commission, it recommends that the Commission alter the language to state that "subscribers" may make changes and adopt a definition of subscriber that matches the FCC's definition.

As with subsection (1), subsection (4) should be consistent with the federal rules as well. Subsection (4) states:

> (4) **Implementing order changes.** An executing carrier may not verify directly with the customer the submission of a change in a customer's selection of a provider received from a submitting carrier. The executing carrier must comply promptly, without any unreasonable delay, with a requested change that is complete and received from a submitting carrier. An executing carrier is any telecommunications carrier that affects a request that a customer's carrier be changed. A telecommunications carrier must submit a preferred carrier change order on behalf of a subscriber within no more than sixty days of obtaining authorization.

AT&T concurs with the rule in so far as it seeks to ensure prompt compliance with requests to change service; however, on March 17, 2003, the FCC—in response to a petition filed by AT&T—ordered that it would no longer limit the effectiveness of multi-line or multi-location requests to 60-days. The FCC agreed, as should this Commission, that large business customers typically execute letters of authorization ("LOAs") pre-subscribing all their existing lines and as well as those to be added in the future to the

[2] Many times widows will retain their deceased husband's names on the accounts as a security measure even though they are paying the bills and making the decisions related to the phone service.

selected carrier.[3] Further the FCC understood that many large business customers seek additional lines under an installation plan that may cover many months and even up to a year beyond the date of the LOA execution. Thus, the FCC ordered that a limitation would needlessly invalidate the LOAs and would not confer additional consumer protection upon the businesses. The FCC modified its rule to accommodate this problem as follows:

> A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. *However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.*[4]

AT&T requests that the Washington Commission adopt similar language to address similar issues.

Turning to subsection 5(d)(iii), AT&T supports the Staff's proposal that freezes be lifted within 72 hours of a customer request. In addition, AT&T has learned through experience with freezes over the years that customers frequently are frustrated by the hassle and delay in having the freeze lifted. Many times this frustration leads to customers simply canceling their change requests. As a result, AT&T requests that the Commission re-evaluate whether PIC freezing should be a mandatory offering or whether carriers should be allowed to offer it at their discretion. Certainly, PIC freezing in the business services arena is, in most cases, absolutely unnecessary because business service tends to be of a nature that it is difficult if not impossible to slam. That said, AT&T

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[3] *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers,* Third Order on Reconsideration and Second Further Notice of Proposes Rulemaking, CC Docket No. 94-129, FCC 03-42 (Rel. Mar 17, 2003).
[4] 47 CFR § 64.1130(j) (emphasis added).

requests that the Commission alter subsection (5), which currently reads, in pertinent part:

> All local exchange companies (LECs) must offer preferred carrier freezes. Such freezes must be offered on a nondiscriminatory basis to all customers.

To read, "All local exchange companies (LECs) may offer preferred carrier freezes for residential or business service as appropriate under the circumstances of the service purchased by the customer."

### F. WAC 480-120-164 Pro Rata Credits

The rule here was not modified by Staff despite carriers' questions to Staff regarding its meaning and Staff's informal advice. That is, the rule currently states:

> Every telecommunications company must provide pro rata credits to customers of a service whenever that service is billed on a monthly basis and is not available for more than a total of twenty-four hours in a billing cycle. The minimum amount of pro rata credit a company must provide is the monthly cost of service divided by thirty, then multiplied by the number of days or portions of days during which service was not provided.
>
> **For example:**
>
> **(Cost of Service)**
>
> **X(Number of days or portions of days without service) .= Pro Rata Credit**
> **(Thirty)**
>
> Pro rata credits are not required when force majeure, customer premises equipment, or inside wiring is the proximate cause for the unavailability of a service. If a company provides a credit amount for unavailable service that is equal to or greater than the credit amount required by this rule, the amount of credit required by this rule need not be provided.

This rule requires, among other things, that carriers give bill credits to customers whenever there is an outage totaling more than 24 hours in any billing cycle. First, most carriers do not have equipment that automatically detects and measures outages. Rather,

carriers rely on customers to notify them when their service is unavailable, and then carriers perform the necessary testing to isolate and repair the problem. Second, it ignores carriers' needs to take down a piece of the network late at night for example to perform upgrades or maintenance. Consequently the rule appears to hold carriers to an impossible standard of 100 % service availability regardless of carrier needs or customer real concerns.

At a stakeholder meeting held March 11, 2004, AT&T and others discussed with Staff the lack of automation and their concerns in relation to this rule. And AT&T, at least, understood Staff's position to be that carriers should issue bill credits when carriers identify outages in the normal course of their business. Therefore, AT&T suggests that the Commission modify the rule to be consistent with industry practice today in terms of identifying problems. AT&T proposes the following changes:

> Every telecommunications company must provide pro rata credits to customers of a service whenever that service is billed on a monthly basis and the customer reports the outage to the telecommunications company. ~~is not available for more than a total of twenty-four hours in a billing cycle.~~ The minimum amount of pro rata credit a company must provide is the monthly cost of service divided by thirty, then multiplied by the number of days or portions of days during which service was not provided.
>
> Pro rata credits are not required when force majeure, customer premises equipment, inside wiring or necessary maintenance or upgrade is the proximate cause for the unavailability of a service. …

### G. WAC 480-120-166 Commission-Referred Complaints

In general AT&T concurs with the Staff's modifications to the rule. Nevertheless, AT&T proposes one additional change; the portion of the rule at issue currently reads as follows:

> (1) Each company must keep a record of all complaints concerning service or rates for at least three years and, on request, make them readily available for commission review.

AT&T requests that the Commission alter the duration of mandatory record keeping to two years rather than three. The two-year proposal is consistent with the FCC slamming rule requirements[5] and many other record retention requirements across the country. Carriers, like other companies, must retain numerous records for long periods of time and for ease of administration and cost reduction it would be helpful for those retention periods to be fairly consistent. Two years seems to be the norm.

### H. WAC 480-120-172 Discontinuing Service – Company Initiated

Today news reports are filled with reports concerning people that have suffered identity theft. This fast growing crime is change the way AT&T and others look at credit protection and credit entities, banks and even phone companies need to respond timely to reduce the amount of harm caused by such theft. That said, AT&T proposes one additional modification to the rule on discontinuance as follows:

> (2)(a) A company may discontinue service without notice or without further notice when after conducting a thorough investigation, it determines: ~~the customer has:~~
>
> (i) The customer has vacated the premises without informing the company;
>
> (ii) The customer has paid a delinquent balance in response to a delinquency notice as described in subsection (7) of this section with a check or electronic payment that is subsequently dishonored by the bank or other financial institution; ~~or~~
> (iii) The customer has failed to keep payment arrangements agreed upon in response to a delinquency notice as described in subsection (7) of this section; or
> (iv) The company has been unable to verify the customer's identity.

Providing notice in an identity theft situation will only assist the thief in escaping. Nevertheless, AT&T appreciates that some customers may not have easily verifiable

[5] 47 CFR § 64.1120(a)(1)(ii)(requiring carriers to keep verifications for "a minimum of two years.").

identities; these customers' service should be restored upon proof of identity through the means contained in subsection (3)(d) of this rule. That is, according to the following step:

> (d) Where the company is unable to substantiate the identity of the individual requesting service:
>
> > (i) Companies must allow the applicant to substantiate identity with one piece of identification chosen from a list, provided by the company, of at least four sources of identification. The list must include a current driver's license or other picture identification;
> >
> > (ii) Company business offices and payment agencies, required under WAC 480-120-132 (Business offices) and 480-120-162 (Cash and urgent payments), must provide a means for applicants to provide identification at no charge to the applicant;

Subsection (3)(d) should be removed from the notice requirement and made a part of its own restoral of service section where the company cannot verify identity.

**I. <u>WAC 480-120-174 Payment Arrangements</u>**

If the Commission accepts AT&T's proposals for modification of WAC 480-120-122 allowing deposits to be paid in two or three equal payments, then subsection (1) of this rule would also need to be modified as follows:

> (1) Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first ~~half~~ installment of a deposit is paid as provided for in WAC 480-120-122 (Establishing credit—Residential services).
>
> In addition, subsection (3) should be further modified to read,
>
> Nothing in this rule precludes the company from entering into separate payment arrangements with any customer for unpaid toll charges or over a longer period than described in this rule as long as both the company and the customer agree to the payment arrangement. Longer payment

arrangements as described in this subsection satisfy the requirements of subsection (1) or (2) above.

The new language is intended to clarify that payment arrangements, which exceed rule requirements, also satisfy those requirements. In other words, if a company allows a customer eight months to pay a prior obligation rather than the six months specified in subsection (1), this arrangement satisfies the company's obligation under the rule and a customer would not need to enter into payment arrangement under this rule for another five years.

### J. WAC 480-120-253 Automatic Dialing Announcing Devices (ADAD)

AT&T specifically concurs in the modifications to these rules made by Staff.

### K. WAC 480-120-439 Service Quality Performance Reports

Competitive local exchange carriers should not have to provide service quality performance reports; it is contrary to the very point of opening the markets to competition. In contrast to competitors, incumbent customer bases were not won through high service quality and customer satisfaction over-time, rather they were awarded by monopoly franchise to the incumbents with guaranteed rates of return. That is why service quality requirements and reporting obligations were created in the first instance—they were a surrogate to competition put in place to ensure service quality where no incentive to provide superior or even good service quality existed. Competitors do not need the same regulatory incentives that incumbents need. The Washington Legislature recognized this when it determined that parity of regulation as between incumbents and competitors was not required or even desired.[6] Moreover, this rule was written in the

[6] RCW 80.36.300(6)(requiring that the Commission permit "flexible regulation of competitive telecommunications companies and services.").

context of incumbent providers and it is inequitable and largely inoperable when applied to competitors in light of the many hurdles they face in obtaining wholesale service.

For example, very few competitors are totally facilities-based providers (including cable-based telephony providers). Consequently, most competitors must rely on timely delivery of wholesale services to make the service due dates they set for their end-user customers. Therefore, if the Commission intends to impose these service quality requirements on competitors, it must—at a minimum—modify them such that they reflect the way competitors actually provision service. Without such modification most competitors do not stand a chance of even beginning to meet these obligations. Setting up impossible standards and then expecting to impose penalties for failure to meet them is simply unfair and not likely to be upheld by a court.

Subsection (4) creates just such an impossible standard. First, virtually the entire subsection is based on WAC 480-120-105 company performance standards for installation or activation of access lines that requires for initial orders of five lines or fewer: installation of 90% within five business days; 99% within 90 calendar days; and 100% within 180 days. The problem with both the existing language in subsection (4) as well as with Staff's proposed language is that both fail to address the fact that during the 1999 rulemaking the Commission correctly made the decision that CLECs could not and should not be held to the same standard as ILECs. Therefore, the Commission adopted WAC 480-120-105(4). Throughout the language proposed in this subsection (4) there are numerous reporting requirements that are based on the five and ninety day standard. This friction between the WAC 480-120-105 and WAC 480-120-439 must be remedied if the Staff hopes to apply these reporting requirements to competitors.

In addition, it may well be impossible for competitors to make five or even 90-day standards where the incumbent LEC's obligations to deliver the underlying wholesale service allow it to chew up a majority of the five or 90-day period. Because the competitor in most cases does not control the underlying facilities, it is at the mercy of the incumbent and so too are its end-user customers.

Finally, AT&T and probably most competitors do not have the systems in place to produce these reports. To adopt the proposed rules in their present form would ultimately cause AT&T and other competitors to expend resources to implement reporting procedures on standards that the Commission itself has waived for competitive companies. Such unnecessary expenditures serve to drive up the cost to competitors to compete; increasing competitors costs at a time when it is quite likely that incumbents will soon be increasing the cost of wholesale inputs will surely diminish competition if not completely destroy it in this State. Therefore, AT&T requests all references within subsection (4) that pertain to a five and ninety day period (highlighted below) be modified to indicate that the section does not apply to CLECs.

> (4) **Installation or activation of basic service report.** The report must state the total number of orders taken, by central office, in each month for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The report must include orders ***with due dates later than five days as requested by a customer.*** The installation or activation of basic service report must state, by central office, of the total orders taken for the month, ***the number of orders that the company was unable to complete within five business days*** after the order date
> (a) The company must file a separate report each calendar quarter that states the total number of orders taken, by central office, in that quarter for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic ***service ninety-day report must state***, of the total orders taken for the quarter, the number of orders that the company was unable to complete within ninety days after the order date.

* * *

(c) A company may exclude from the total number of uncompleted orders for the month:

(i) Orders for which customer-provided special equipment is necessary;
(ii) When a later installation or activation is permitted under WAC 480-120-071 ,Extension of service);
(iii) When a technician arrives at the customer's premises at the appointed time prepared to install service and the customer is not available to provide access; or
(iv) When the commission has granted an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC), from the requirement for installation or activation of a particular order~~,~~

(d) For calculation of the report of orders installed or activated ***within five business days in a month***, a company may exclude from the total number of orders taken and from the total number of uncompleted orders for the month, orders that could not be installed or activated within five days in that month due to force majeure if the company supplies documentation of the effect of force majeure upon the order.

Finally, these rules require order reporting "by central office." As the Commission well knows, competitors do not have central offices like incumbents and cannot report their orders based upon the incumbent's central office locations. In short, this rule—as written for the monopoly environment—does not work in a competitive environment.

### L. WAC 480-120-540 Terminating Access Charges

AT&T is concerned that this rule may overstep the Commission's jurisdiction. For example, the Washington Commission governs competitor and incumbent intrastate, switched access rates, which must be filed in tariffs or price lists with the Commission.[7] The FCC governs competitors' interstate, switched access rates pursuant to the *Seventh Report and Order and Further Notice of Proposed Rulemaking* and 47 CFR § 61. 26. The rule, however, declares that:

(1) Except for any universal service rate allowed pursuant to subsection (3) of this section, the rates charged by a local exchange company for terminating access shall not exceed the lowest rate charged by the local

[7] RCW 80.36.100; WAC 480-80-121; and WAC 480-80-201.

> exchange company for the comparable local interconnection service (in each exchange), such as end office switching or tandem switching. If a local exchange company does not provide local interconnection service (or does so under a bill and keep arrangement), the rates charged for terminating access shall not exceed the cost of the terminating access service being provided.

Clearly, the rule makes no distinction between inter and intra state access rates.

In addition, the Commission has granted competitors certain exemptions that generally allow them to price their access rates at an amount that is consistent with what Qwest and Verizon charge, including the universal service rate element. Because the exemption is necessary and fair, the Commission should incorporate it into the rule for competitors.

**M. <u>WAC 480-122-020 Washington Telephone Assistance Program Rate</u>**

AT&T concurs in Staff's changes to WAC 480-122-020 that eliminate the requirement that non-ETC companies with 100 or more residential access line offer WTAP service. Staff clearly recognized that for a number of business reasons many companies have made the decision not to petition the Commission for ETC status. Staff's modification recognizes that by requiring those non-ETC companies to provide WTAP, they may not have recovered their full cost for provision of the service since they are unable to draw out of the federal fund. Staff's language correctly places the burden of provisioning WTAP on the incumbent companies and those companies who have sought ETC status.

**N. <u>WAC 480-120-060 Telephone Assistance Excise Tax</u>**

In its proposal Staff has eliminated this rule requiring wireline carriers to collect the excise tax. Because AT&T cannot find where, if at all, this rule has been replace, is it to assume that it no longer must collect and remit such tax under Commission

instruction? Staff's intent is not clear; thus, AT&T needs some explanation of Staff's proposal.

**O. <u>WAC 480-120-196 Customer Notice</u>**

Although not addressed in Staff's proposal, AT&T would like to modify this rule slightly to make it consistent with practice and other rules. Recently, while working with Staff on a customer notice AT&T and Staff discovered that the language regarding notice requirements for incidental charges (*e.g*., NSF check charge and late payment fee) was included in WAC 480-120-195 (Notice of tariff changes other than increases in recurring charges and restrictions in access to services) but inadvertently left out of WAC 480-120-196. Staff indicated that it intended to include identical language in WAC 480-120-196 and suggested that AT&T include it in our comments in the "tune-up" rulemaking. So here it is, AT&T is requesting that the Commission modify WAC 480-120-196 (1) to read as follows:

> (1) A company must provide customer notice before the effective date of changes to the price list for competitively classified companies or competitively classified services.
>
> (a) The company must provide notice to each affected customer at least ten days before the effective date when a company proposes to:
>
> (i) Increase rates;
> (ii) Decrease rates; or
> (iii) Change terms or conditions.
>
> The company must measure the ten-day period from the time the notice is mailed to all customers or appears in the newspaper or on the website.
>
> <u>(b) A company that files a price list change to increase any charge that a customer may incur without being quoted a rate or price (e.g., late payment fees, insufficient fund charges, or a one-time charge) must provide notice to each affected customer on or with the first bill after the change becomes effective.</u>
> <u>(c)</u> ~~(b)~~ Each customer notice must include, at a minimum: …

## II. Customer Privacy Rules

In general, AT&T supports the modifications made to the privacy rules.

Respectfully submitted this 30th day of June 2004.

**AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC. AND AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE AND TCG OREGON**

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