

Agenda Date: May 9, 2001
Item No. : 2C (Addendum)

Docket: **UT-010333**
Petition of XO Washington, Inc., TCG Oregon, TCG Seattle, Pac-West Telecomm, Inc., Global Crossing Local Service, Inc., AT&T Communications of the Pacific Northwest, Inc., and Advanced TelCom Group, Inc., ('Joint Petitioners) for Waiver or Modification of RCW 80.36.150 and WAC 480-120-027(3).

Company: Joint Petitioners

Staff: Glenn Blackmon, Assistant Director Telecommunications

Recommendation:

Deny the petition for waiver or modification of the requirements of RCW 80.36.150 and WAC 480-120-027(3)(a).

Background:

RCW 80.36.150 requires contracts for telecommunications services to be filed “as and when required by the commission.” The WUTC has specific filing requirements for competitive services in WAC 480-120-027. The filing requirements differ for *companies* classified as competitive relative to *services* classified as competitive:

Type of company	Filing deadline	Applicable rule
Competitive companies (such as joint petitioners)	5 days after execution of contract	480-120-027(3)(a)
Competitive services (such as those of Qwest or Verizon)	10 days before stated effective date of contract	480-120-027(3)(b)

On March 8, 2001, the Joint Petitioners filed a petition asking that the WUTC waive the provisions of RCW 80.36.150 and WAC 480-120-027(3) or grant other relief and modifications of the rule as the WUTC sees fit.

On March 28, the WUTC acted on a similar petition by Electric Lightwave, Inc, in Docket UT-001711. In that case, the WUTC permitted Electric Lightwave to file contracts 10 days before the stated effective date of the contract, which is the same filing requirement as applies to competitive services of incumbent local exchange companies. The waiver also allows Electric Lightwave further flexibility to file contracts up to 15 days *after* their stated effective date, but only if the contract includes a provision permitting the WUTC to reject a contract within the first 15 days after it is filed.

Discussion:

Staff is hopeful that in the current review of WAC 480-120 the WUTC will propose and eventually adopt a revision to WAC 480-120-027 that will substantially reduce contract filing requirements for the competitive services of competitive telecommunications companies and incumbent local exchange companies. However, until the rules are relaxed for all companies, a complete waiver of the filing requirement for Joint Petitioners could well result in an unfair competitive advantage to these companies.

Staff has offered to Joint Petitioners, as well as any other company subject to WAC 480-120-027(3)(a) or (3)(b), the waiver provision granted to Electric Lightwave. This waiver would put the Joint Petitioners into a parity position with their incumbent local exchange company competitors. However, despite extensive discussions, Staff and Joint Petitioners have been unable to arrive at an acceptable alternative to the current rule.

Joint Petitioners have suggested, as an alternative to a complete waiver, that they be permitted to file contracts 15 days after execution instead of 5 days after execution. Staff opposes this alternative, because it would in most cases eliminate the WUTC's ability to reject contracts when such action is appropriate. RCW 80.36.150(3) states that a contract shall be enforceable "unless the contract has been rejected by the commission *before its stated effective date* as improper..." [emphasis added]. Unless contracts are required to be filed before their effective date, any extension of the filing deadline increases the likelihood that the contract will already be in effect when it is filed with the WUTC, thereby eliminating any opportunity to reject an improper contract.

The Electric Lightwave waiver provision preserves the WUTC's ability to reject improper contracts and still provides that company with extra time to file the contracts. Joint Petitioners argue that this approach would require them to add language to standard contracts used in many states. Staff believes this argument glosses over the fact that there are many differences among states in filing and tariffing requirements. Even if they choose not to use this alternative, the proposed filing deadline of 10 days before effective date is exactly the same deadline faced by their incumbent competitors.

Conclusion

Staff recommends that the waiver request be denied because it could result in an unfair competitive advantage and impair the WUTC's ability to act appropriately on improper contracts.