



# Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE CHARLOTTE HONOLULU LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE  
WASHINGTON, D.C. SHANGHAI

GREGORY J. KOPTA  
Direct (206) 628-7692  
gregkopta@dwt.com

2600 CENTURY SQUARE  
1501 FOURTH AVENUE  
SEATTLE, WA 98101-1688

TEL (206) 622-3150  
FAX (206) 628-7699  
www.dwt.com

March 10, 2000

## VIA ELECTRONIC MAIL ORIGINAL VIA FEDEX

Carole J. Washburn  
Secretary  
Washington Utilities & Transportation Commission  
1300 S. Evergreen Park Drive SW  
P.O. Box 47250  
Olympia WA 98504-7250

Re: Carrier-to-Carrier Service Quality Rulemaking, Docket No. UT-990261

Dear Ms. Washburn:

Pursuant to the Notice of Opportunity to File Supplemental Comments (March 10, 2000) in the above-referenced docket, NEXTLINK Washington, Inc., Electric Lightwave, Inc., Advanced TelCom Group, Inc., GST Telecom Washington, Inc. (collectively "Joint Commenters"), provide the following comments in response to issues raised in that Notice. As explained more fully below, tariffs alone are not a useful tool in this carrier-to-carrier service quality proceeding, and thus the Commission should not rely on tariffs to establish appropriate wholesale service quality standards, measures, and remedies.



The Commission should *not* address carrier-to-carrier service quality through tariffs or a Statement of Generally Available Terms ("SGAT"), rather than by rules. Competing local exchange companies ("CLECs") need the Commission to establish service quality standards, measures, and remedies because the incumbent local exchange companies ("ILECs") have refused to do so or to provide acceptable service quality to competitors. The federal Telecommunications Act of 1996 ("Act") and the Federal Communications Commissions have effectively required the ILECs – particularly U S WEST Communications, Inc. ("U S WEST") and other Bell Operating Companies – to develop the means to ensure that CLECs receive service that is "at least equal in quality" to the service the ILECs provide to themselves. The Commission should not expect that promulgating a rule that merely reiterates this requirement will have any more success than the Act and the FCC in generating compliance.

Relying solely or even primarily on ILEC tariffs or SGATs to establish appropriate service quality standards, measures, and remedies also provides ILECs with unwarranted control over the specific content and interpretation of the ILECs' obligations. A tariff is effectively a contract between the ILEC and its customers – in this case, CLECs. The language used to govern the quality of the service ILECs provide to customers who are also competitors should not be developed solely by the ILECs, particularly in light of the Act's preference for bilateral contracts between such carriers and the ILECs' well documented antipathy to providing meaningful service quality standards, measures, and remedies.

Nor should the ILECs be entitled unilaterally to change the language governing the service quality it provides to competitors. An ILEC tariff is subject to change on 30 days notice from the ILEC. CLECs should not be required constantly to monitor the ILECs' tariff filings and use limited resources to oppose ILECs' attempts unilaterally to change the terms and conditions under which they provides service to CLECs. The Joint Commenters, therefore, urge the Commission not to pursue service quality terms and conditions through ILEC tariff or SGAT filings.

The Commission also raises "the possibility of a rulemaking that results in tariffs incorporating the specific elements of carrier-to-carrier service quality." Such a rulemaking presents many of the same problems as an attempt to establish service quality standards, measures, and remedies through a tariff process. If the Commission pursues this option, any such procedure should include the following three related requirements:

- (1) The Commission should adopt detailed rules that establish an appropriate framework for service quality requirements, including specific standards for preordering, ordering, provisioning, maintaining and repairing, and billing for unbundled network elements and services provided for resale. Any tariff would be used only to implement and provide additional detail to the rules.
- (2) Tariff language implementing the Commission rules should be developed jointly by the ILECs, CLECs, and Commission staff to ensure that the language accurately reflects and complies with the Commission's rules and federal law. Any subsequent changes to that tariff language must be jointly requested by those same parties.
- (3) Carriers should be able to modify the tariff language through the provisions of negotiated or arbitrated interconnection agreements consistent with nondiscrimination principles. The existence of the tariff, without more, should not preclude a CLEC from obtaining different or additional service quality standards, measures, or remedies.

Finally with respect to whether certain performance requirements now used for retail services could be used to measure carrier-to-carrier service quality, the ILECs should be required to include measures of both retail and wholesale service quality to ensure that the ILECs are not discriminating against wholesale customers. Joint Commenters, however, doubt the accuracy and adequacy of existing service quality measures. The Joint Commenters have observed substantial discrepancies between the service quality ILECs report to CLECs and the CLECs' own measures of the service quality they receive. There is no reason to believe that ILECs are not similarly manipulating retail service quality measures. Accordingly, the Commission should ensure that the measures used for both retail and wholesale service quality are accurate and permit meaningful comparison between the service ILECs provide to competitors and to themselves. Such an effort will likely require close examination of existing measures for retail service quality, as well as of proposed measures for wholesale service quality, rather than rote extension of existing measures.

The Joint Commenters appreciate the opportunity to express their concerns on these issues and look forward to continued participation in this proceeding.

Carole J. Washburn  
March 13, 2000  
Page 3

Sincerely yours,

DAVIS WRIGHT TREMAINE LLP

Gregory J. Kopta  
Attorney for NEXTLINK Washington, Inc., Electric  
Lightwave, Inc., Advanced TelCom Group, Inc., GST  
Telecom Washington, Inc.

cc: Service List  
Rex Knowles  
Kaylene Anderson  
Barbara Young  
Kath Thomas  
Gary Yaquinto