BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rule-Making Proceeding Related to Telecommunications Companies – Chapter 480-120 WAC	DOCKET NO. UT-990146

Comments of
Public Counsel
Attorney General of Washington

March 25, 2002

Public Counsel files these comments in advance of the Commission's consideration to approve certain telecommunications rules for CR-102. Although we support many of the rules and believe they provide consumer benefits, such as the proposed privacy rules, we continue to have very strong concerns with certain rules. We support moving the proposed CPNI rules, as released February 14, 2002 to CR-102. However, we urge the Commission not to move the following three rules to the CR-102 rulemaking phase:

- 480-120-122a or 122b Establishing credit—Residential services
- 480-120-107 Company performance standards for installation or activation of access lines
- 480-120-105 Information to Consumers

Our comments today focus on the three rules listed above as well as the proposed privacy rules.

WAC 480-120-122a or 122b Establishment of credit – Residential services.

Public Counsel opposes sending this rule to the CR-102 rulemaking phase in the strongest possible terms. The proposed rule would represent a major policy change for the Commission regarding on what basis a local exchange company (LEC) is entitled to collect a customer deposit. The proposed rule would allow LECs to use credit reports as a means of evaluating whether a consumer represents a credit risk for the company. In our comments filed November 5, 2001 in this docket we described several concerns with the proposed establishment of credit rule. Today we incorporate those comments by reference and summarize our concerns.

The purpose of a deposit payment is to reduce the amount of uncollectibles. In our comments filed November 5, 2001, we recommended that prior to adopting a new rule that would provide for a major policy change regarding on what basis a LEC is entitled to collect a customer deposit, the largest LECs should provide data regarding uncollectibles in Washington state. That information would help us determine whether a significant modification of the current rule is justified. Our understanding is that such an analysis has not yet occurred.

If the WUTC would like to make a distinction between the criteria used to evaluate whether a deposit is required for basic local services versus ancillary services, Public Counsel's preference would be to retain the existing framework in the establishment of credit rule (WAC 480-120-056) for deposits for ancillary services. We continue to strongly oppose the use of credit reports to determine whether a residential customer poses a credit risk to the LEC for the reasons summarized below.

Credit reports are a poor predictor of credit worthiness vis-à-vis utility bills. A review of customer deposit rules conducted for Commission Staff in 1994 concluded that the use of third-party supplied credit information as a basis for making utility deposit decisions does not represent sound public policy. In that study, Roger Colton states: "Substantial research has

found that consumers tend to pay their utility bills before paying nearly any other outstanding credit (other than rent or mortgage obligations). As a result, information from a credit reporting agency that indicates a lack of creditworthiness based on non-utility transactions does not provide useful information as to a customer's likelihood of paying a home utility bill."[1] Colton's review cites research studies that show customers tend to pay their home energy and telephone bills first and their charge accounts last.

Credit reports are notoriously inaccurate and difficult to correct. Issues surrounding credit reports are a major source of complaints to the Consumer Protection Division of the Attorney General's Office. Consumers who file complaints with the Attorney General typically experience one or more of the following problems: (1) they were denied credit based on erroneous information in one or more of their credit reports, (2) they tried to get the disputed items corrected and were unsuccessful, or (3) they did not receive a response to their initial request to procure a copy of their credit report to determine why they were denied credit. In a two-year period, from 1998 to 2000, the number of consumer complaints filed with the Attorney General's Office related to one of the "Big Three" credit agencies (Equifax, TransUnion, and Experian) increased by 48%.

Finally, with respect to the amount of the deposit, we observe that the language in subsection (4) of the proposed rule is ambiguous. Specifically, it is not clear whether the amount is determined by the *service* (basic or ancillary) or the *customer group* (basic or ancillary). In other words, if a customer is applying for basic service plus call waiting (an ancillary service),

[1] Colton, Roger. *Customer Deposit Demands by US West: Reasonable Rationales and the Proper Assessment of Risk*, Prepared on behalf of the Staff of the Washington Utilities and Transportation Commission, Docket UT-930482, August 1994, page 4.

and they are determined to pose a credit risk, is the amount of the deposit based upon two months charges for call waiting, or call waiting plus the basic local service?

In summary, Public Counsel is not yet persuaded of the need to substantially modify the existing rule pertaining to the establishment of credit. We believe there needs to be more empirical evidence that the existing framework set forth in subsection (3)(a) through (e) of the existing rule (WAC 480-120-056) makes it difficult for certain groups of customers to establish credit. We are not yet convinced of the need for a major revision of the existing rule. Indeed, given that issues related to credit reports are a significant area of consumer complaints to the Attorney General's Office, Public Counsel is concerned that in seeking to address perceived shortcomings with the existing rule the Commission may adopt a new rule that generates even more problems and consumer complaints. If the WUTC would like to make a distinction between the criteria used to evaluate whether a deposit is required for basic local services versus ancillary services, Public Counsel's preference would be to retain the existing framework in the establishment of credit rule (WAC 480-120-056) for deposits for ancillary services.

WAC 480-120-107 Company performance standards for installation or activation of access lines

Public Counsel opposes this proposed rule because it represents a weakening of the existing performance standard regarding installation or activation of access lines, as set forth in WAC 480-120-051, in that performance would be measured on a *statewide* basis rather than on an *exchange level* basis. We are concerned that establishing a statewide performance standard instead of an exchange-level standard would remove an important incentive that LECs provide an adequate level of service quality to all areas of the state. Our concern is that LECs could remain in compliance with a statewide performance standard by meeting the standard in its large exchanges while providing a vastly lower level of service to its smaller exchanges.

WAC 480-120-105 Information to Consumers

A recurring theme that has emerged during this rulemaking docket is that it is difficult for consumers to obtain accurate information about telecommunications rates and terms of service. We believe that this proposed rule is substantially weaker than earlier draft versions and would provide little benefit to consumers. We urge the Commission not to move this rule to CR102.

Consumers should be able to easily obtain accurate information about the telecommunications services they purchase, including the rates and terms of service. We are extremely concerned that subsection (1)(b) of the proposed rule has been further modified such that the "welcome letter" new consumers would receive is no longer required to include information about the rates for each service being provided to the customer. A welcome letter that simply identifies the services being provided to the customer, but does not include the relevant rates for those services, would be of limited value to consumers.

In addition, our strong recommendation is that the information in the "consumer information guide" should appear in the welcome letter sent to applicants for new service, as well as in the directory. As currently drafted, subsection (1)(d) of the proposed rule would allow local exchange carriers to choose to provide this information in the welcome letter or in the directory (pursuant to WAC 480-120-251). This means there would be no guarantee as to when the customer would actually receive this information because the rule pertaining to directory service (480-120-251) does not contain a requirement outlining when customers should expect to receive the directory. We believe the consumer information outlined in subsection (6)(a) through (f) of WAC 480-120-251 is extremely important information, and should be easily accessible to consumers. We think that it makes sense to provide this information in the welcome letter sent to new customers (e.g. how to establish credit, how a bill becomes delinquent, etc.), and that it

also makes sense to include this information in the directory, as a resource for existing customers. We note that even if this rule goes into effect, current customers would not have received a "welcome letter" with the consumer information guide, and thus it should continue to be included in the directory. Given that most companies indicated at the workshop held in October, 2001 that they do send a welcome letter to new customers, we do not think that including the consumer information guide in the welcome letter and in the directory represents a significant burden for the companies.

Public Counsel recommends that subsection (1) of the rule should also require notice to applicants and customers that basic service may not be terminated for non-payment of other services. Public Counsel also believes that subsection (1) should require companies to inform applicants and customers about any service quality guarantees the LEC may be required to offer pursuant to WAC 480-120-108 and 109, including the $50 missed appointment credit and credits for the LECs failure to install or activate service by the commitment date. Finally, we also recommend that companies inform applicants and customers about the company's procedure for handling repairs and service interruptions. This information should include the remedies and credits available to a customer for out of service conditions, as set forth in the proposed rule WAC 480-120-164.

Finally, we support the concept of a "Telecommunications Consumer Bill of Rights" that has been advanced by the Seattle Telecommunications Project, and we encourage the Commission to include a telecommunications consumer bill of rights as part of the "consumer information guide" referenced in proposed WAC 480-120-105 and WAC 480-120-251.

Suggested language

In the second sentence of subsection (1)(b) strike "the current rate, including the minimum and maximum at which the customer's rate may be shifted" and after "If the service is provided under a banded rate schedule" insert "… , notice must provide clear and concise information regarding the current rate, the minimum and maximum rates, and a brief statement describing when and how customers would be notified if the Company increases rates within the prescribed band."

In subsection (1)(d) strike the word "either" and before the phrase "must inform the customer that …" replace the word "or" with "and".

(1)(e) clear and concise notice of any service quality credits the company is required to offer, pursuant to WAC 480-120-108 and WAC 480-120-109.

(1)(f) information on how the company will handle repair requests and service interruptions including the remedies available to the customer for untimely service by the company and the pro-rata credits awarded to customers as set forth in WAC 480-120-164.

(1)(g) a statement that a customer's basic local service may not be terminated for non-payment of other services provided by the company.

WAC 480-120-202 through 216

The following comments are based upon the discussions that have occurred at the last two rulemaking workshops and the comments Public Counsel previously filed in this docket. We recommend that the commission proceed to the CR 102 notice phase of the rulemaking process for these rules and look forward to their eventual adoption.

Public Counsel has continuously advocated in favor of obtaining a consumer's express agreement prior to a company using customer proprietary network information (CPNI) for purposes other than serving that consumer for the services already agreed to. Our position is

founded upon our interpretation of 47 USC §222(h)(1)(A), which we believe vests the consumer with the right of control over his or her CPNI. We believe that under federal law CPNI is the customer's property made available to the company (analogous to a bailment) solely for purposes of completing the call placed with the company. Any additional commercial use by the company is not within the ambit of the implied consent the consumer has granted to the company for the use of CPNI. Therefore, the only effective means for a consumer to "approve" of the use of their CPNI is through express consent, or "opt-in" approval for the use of CPNI.

To that end we support the Commission's current revisions to these rules which provide for opt-in protection of the customer call detail information subset of CPNI and for use of CPNI for any purpose other than marketing related services. While we continue to advocate for an all encompassing opt-in privacy regime we also recognize that the Commission's current draft of the rules provides significantly improved notice and required methodologies for the remaining set of CPNI which the WUTC would allow carriers to utilize through an opt-out mechanism.

During the course of last Friday's workshop a number of issues were raised which time did not permit us to respond to contemporaneously. At one point Ms. Kraus, representing Qwest, asserted that there is a policy preference for the "free flow of information" and therefore carriers like Qwest should be allowed to use CPNI as they choose. Public Counsel would point out for the commission's consideration that there are a number of areas where competing policy considerations limit the free flow of information. Economic examples include copyright and patent laws where the free flow of information is restricted in order to create an economic incentive to develop intellectual property and spread its use. Constitutionally permitted limits on the "free flow of information" include restricted speech (shouting "fire" in a crowded theater) and matters of national security.

The issue with CPNI is not the "free flow of information" but rather who retains the property interest in the information, and thus control over its use. It is our position that the consumer retains the property interest in CPNI and thus should retain control. Approval for the use of CPNI by a carrier is implicit in completion of a call, and federal law has provided other areas of implied consent in 42 USC §222(d). For commercial uses of CPNI Public Counsel believes the company should be required to obtain the express consent of the consumer through opt-in.

WAC 480-120-208

Public Counsel would like to emphasize the importance of providing as many avenues for consumers to exercise their desire to protect their privacy in the event the commission permits some degree of opt-out protection. The companies should be required to provide all the options listed in subsection (2).

WAC 480-120-209

Public Counsel supports retention of the "in writing" confirmation requirement. We would support expanding it in this context to include email if that was the method by which the consumer initiated the communication with the company.

We recommend that subsection (3)(j) include a provision that if the notice is translated into another language, the notice should include a statement indicating whether the company provides operators who speak that language at the telephone number the company provides for billing or customer service inquiries.