

December 23, 2003

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VIA HAND DELIVERY

Ms. Carole Washburn
Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
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Olympia, WA 98504-7250

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

**Re: In the Matter of Comcast Phone of Washington, LLC
Docket No. UT-031459/UT-031626**

Dear Ms. Washburn:

Enclosed for filing in the above-referenced matter, please find the original and 13 copies of the Reply Brief of Comcast Phone of Washington, LLC, Declaration of Rhonda Weaver In Support of Comcast Phone Reply and Certificate of Service.

If you have any questions, please call me at (206) 340-9381. Thank you.

Sincerely,

GRAHAM & DUNN PC



Nancy E. Dickerson
Assistant to Judith A. Endejan

/ned
Enclosures

cc: All Parties
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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,)
COMCAST PHONE OF WASHINGTON, LLC) No. UT-031459/UT-031626
) REPLY BRIEF OF COMCAST PHONE OF
) WASHINGTON, LLC
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)
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)

I. INTRODUCTION

Comcast Phone of Washington, LLC (“Comcast Phone”) hereby replies to the Motions for Summary Determination by the Washington Utilities and Transportation Commission (“Commission”) Staff (“Staff”), Qwest Communications, Inc. (“Qwest”) and Public Counsel.

II. ARGUMENT.

A. THE COMMISSION HAD NO INTENT TO MAKE A MAJOR POLICY CHANGE BY SUBJECTING CLECS TO CLASS A OBLIGATIONS.

As Comcast Phone has discussed in its Motion, the Commission has historically reserved the term “Class A” for ILECs, as is apparent, for example, in the Commission’s long-standing reporting/accounting rules.¹ The new rules developed in Docket No. UT-990146 perpetuate the

¹ See, e.g., WAC 480-120-302. In R-507, the Adoption Order in Docket No. UT-990146, the Commission refused to reject following the FCC’s Part 32 rules, in effect since 1998. Staff appears confused as to the relevancy of the FCC’s Part 32 accounting rules for determining the meaning of “Class A” company. These FCC rules are relevant to demonstrating that the common regulatory meaning and use of the term “Class A” applies only to ILECs. That they are used only for accounting purposes does not mean the term Class A applies to CLECs, a usage that would be inconsistent with previous Washington and FCC practice. See also WAC 480-120-071(4)(b)(i).

“old meaning” that only ILECs may be considered Class A/B companies. For example, new rule WAC 480-120-302(1) uses the terms “Class A” and “Class B” only in conjunction with “companies not classified as competitive.”²

However, Staff contends in its Motion that a CLEC may be a “Class A company” for one purpose only – filing reports under WAC 480-120-439 – and not for other purposes such as accounting requirements under WAC 480-120-302(1)(a), with no explanation for why the Commission would draw such inconsistent lines. Staff cites no evidence for its contention that the Commission intended (or ever even considered) that WAC 480-120-439 would include CLECs. Absent such evidence, WAC 480-120-439 should not be interpreted as Staff maintains, for the reasons discussed below.

Instead, the Commission should follow the rules of construction described in the following passage from 2 Am.Jur.2d, Administrative Laws, § 239 (2nd Ed. 1994):

The first rule of construction as to administrative rules and regulations is that rules made in the exercise of a power delegated by statute should be construed together with the statute to make, if possible, an effectual piece of legislation in harmony with common sense and sound reason. The second rule is that generally the same rules of construction and interpretation that apply to statutes, particularly those in the same field, govern the construction and interpretation of rules and regulations of administrative agencies. Thus, rules applicable to statutes, such as construction to uphold validity; construction in accordance with legislative intent and purpose; construction as a whole, by comparing every section as part of a whole; construction to harmonize two or more provisions on the same subject, giving effect, if possible to all the provisions of the regulations; construction of general provisions as limited in their application by specific ones on the same subject; construction in accord with the natural and plain meaning of words; strict construction of provisions defining conduct for which criminal or penal sanctions are imposed.

Under those rules of construction, an interpretation of “Class A” to exclude CLECs is clearly warranted. That interpretation is consistent with legislative intent that CLECs receive

² In providing guidance to Comcast Phone on how to determine whether Comcast Phone was a “Class A” company, Staff admitted that this determination was to be made pursuant to WAC 480-120-302. See Attachment A to Weaver Declaration, filed with Comcast Phone’s Motion for Summary Determination.

streamlined regulation.³ It is limited by the specific application of the term “Class A” in WAC 480-120-302(1)(a) and would allow for harmonization throughout all of ch. WAC 480-120 (e.g., between WAC 480-120-021, -302(1)(a) and -439). It is appropriate because WAC 480-120-021 conditions its definitions with introductory language that allows for alternate definitions “where the context clearly requires otherwise.”

If the Commission intended to make a major policy change to its regulation of CLECs in a rule, it was clearly obligated to provide sufficient notice and opportunity for comment by impacted parties, to explain why the Commission made that major change in policy,⁴ and to make that policy change explicit in rule language rather than in language which is unclear in the context of the entire chapter. The Commission did none of the above because it had no clear intent to sweep CLECs into the Class A category.

B. THE LEGISLATIVE HISTORY OF RCW 80.04.530 PROVIDES THAT THE TWO-PERCENT THRESHOLD IS ONLY INTENDED TO APPLY TO ILECS.

As Staff admits in its Motion (page 3), the principle regarding exempting companies with less than two-percent of access lines from reporting requirements is found in RCW 80.04.530 -- a section of the RCW that applies reporting requirement exemptions only to ILECs. If the Commission relied on RCW 80.04.530 when it modified the Pre-Proposal Draft of February 14, 2002 (“Pre-proposal Draft”) to introduce the “Class A” language to WAC 480-120-439, it must have intended the new reporting rules to apply only to ILECs. Indeed, it is logical to conclude that the two-percent threshold language was added to the Pre-Proposal Draft because the

³ It is clear that the legislative intent behind RCW 80.04.530 was to streamline regulation for small ILECs. See Weaver Declaration of December 22, 2002, Attachment A. It is also clear that the legislature intended that CLECs be subject to streamlined regulation – not just by being allowed to file price lists as Staff maintains in its motion (p. 11). In RCW 80.36.320(2), the legislature indicated its preference for minimal regulation when “competition will serve the same purposes as public interest regulation.” Accepting Staff’s view leads to a conclusion inconsistent with legislative intent – namely streamlined regulation for Class B companies but not for CLECs.

⁴ An agency must state the basis and purpose of a regulation with sufficient clarity to enable a reviewing court to see what major policy issues were ventilated and why the agency reacted to them the way that it did. *The Fishing Company of Alaska v. U.S.*, 195 F. Supp.2d 1239, *aff’d* 333 F.3d 1045 (9th Cir. 2003).

Commission realized that RCW 80.04.530 required it to exempt ILECs with less than two-percent of access lines from the reporting requirements.

RCW 80.04.530, which was effective on July 23, 1995, applies to “local exchange companies,” which at that time could have meant only ILECs, because CLECs had not entered the market in 1995. The legislative history of the underlying bill provides that, at the time of its passage, Washington State claimed “21 LECs” or “local exchange companies,” 17 of which were small ILECs. SHB 1744 ch.110 L95; see Attachment A to Weaver Declaration of December 22, 2002. Because all local exchange companies were incumbents at that time, “LECs” as used by the legislature and in the body of RCW 80.04.530 must refer to what has come to be known as “ILECs.” *Children’s Hosp. & Med. Ctr. v. Washington State Dep’t of Health*, 975 P.2d 567, 571, 95 Wash. App. 858 (1999) (statutes are interpreted to “ascertain and give effect” to the Legislature’s intent as manifested in statute’s express language) (citations omitted). Indeed, this interpretation is supported by the subsequent eight years of application of the Class A/B distinction to ILECs only. This interpretation is also consistent with legislative mandates requiring that CLECs be subject to minimal regulation. RCW 80.36.320(2); RCW 80.36.300.

In sum, the legislative history underlying RCW 80.04.530 supports a reading of the new reporting rules to apply only to ILECs, as further demonstrated in Attachment A to the Weaver Declaration.

C. THE NEW REPORTING RULES SHOULD NOT BE APPLIED TO CLECS BECAUSE THE COMMISSION’S LATE CHANGE TO THE DRAFT NEW REPORTING RULES WAS MADE WITHOUT PROPER NOTICE OR A TRUE OPPORTUNITY FOR CLECS TO BE HEARD.

The new reporting rule, WAC 480-120-439⁵, was introduced late in the rulemaking process with inadequate notice to CLECs that they could be impacted, if that was the Commission’s intent, which Comcast Phone contends was not the case. If the Commission did

⁵ Its predecessor, WAC 480-120-535, was limited to ILECs because it was enacted at a time (1993) when CLECs did not exist. Comcast Phone was not required to comply with this old rule.

intend this impact, CLECs were not given sufficient due process before enactment of such a significant change to WAC 480-120-439. Specifically, the first time that Staff included the Class A/B language was in the "Pre-Proposal Draft," nearly two and a half years into the rulemaking process. There was no opportunity for written comments on that change, and there was no explanation of the reasons for the change. That change, were it interpreted to subject CLECs to the new reporting rules, would be extreme and significant to CLECs, because it represented the first time that the Commission had ever applied the Class A/B distinctions to CLECs (changing the historical use of the term as seen throughout WAC 480-120). If the Commission truly intended to deviate from its past policies and practices and apply the Class A/B distinction to CLECs, why did it remain silent on its intent, why did it add the language late in the rulemaking process without highlighting that material change? Comcast Phone concludes that the Commission did not intend to change the manner in which the Class A/B distinction had been applied historically, but instead intended the distinction to be applied as it always had been - - to ILECs only. To find otherwise would violate principles of due process requiring agencies to provide notice of the anticipated effects of new rules, and of statutory construction requiring that rules are to be read to find a rational and sensible result. *See* RCW 34.05.320 (1)(j) (Administrative Procedures Act requires agencies to give notice of anticipated effects of new rules and how they might modify existing rules); *State v. McGinty*, 80 Wash. App. 157, 160 906 P.2d 1006 (1995) (administrative rules and regulations are to be given a rational and sensible construction).

In addition, if the Commission intended for its last-minute changes to alter the way the Class A/B distinction has been applied historically, then its actions would have been contrary to established principles requiring agencies to justify changes in course.⁶ *Ass'n v. State Farm Mut.*

⁶ For this same reason, the Commission had an obligation to apply the standards set forth in *MCI Metro Access Transmission Services, Inc. v. US West Communications, Inc.*, Docket No. UT-971063, Commission Decision and Final Order Denying Petition to Reopen, Modifying Initial Order, In Part, and Affirming, In Part (Feb. 10, 1999). Staff argues that there is no reason to apply the standards in this instance, because the facts involved here are not complex. (Motion p. 12). First, Staff cites no support for its conclusion that non-complex facts allow an agency to

Auto. Ins Co., 463 U.S. 29, 42 (1983) (there is a presumption that policies committed to by agencies are best carried out by a “settled course of behavior,” and a change in that course demands “reasoned analysis” to support it) (citation omitted); *INS v. Yueh-Shaoi Yang*, 519 U.S. 26, 32 (1996) (unexplained departure from previous Commission precedent constitutes arbitrary and capricious action). Here, because the Commission made no attempt whatsoever to explain any departure from years of established practice and reasoned principle, Comcast Phone submits that the Commission did not intend to undertake such a departure.

Therefore, CLECs correctly concluded that the new reporting rules did not apply to them; nor should those rules apply to CLECs without proper notice, opportunity to be heard and justification for the Commission’s change in course.

D. SOUND, CONSISTENT REGULATORY POLICY REQUIRES THAT CLECS BE EXCLUDED FROM A CLASS A CATEGORIZATION.

Staff argues that requiring some CLECs that are larger than others to report on service quality is necessary for policy reasons to ensure high-quality service. (Motion, p. 9) Dr. Blackmon takes the view that consumers with competitive choices are not to be protected by market forces, but by regulation. (Blackmon Declaration ¶¶ 15, 16)

Those arguments unravel for several reasons. First, if Staff is concerned about ensuring high-quality service for all consumers, why would customers of smaller companies not be entitled to the same protection? Second, if Staff does not want to “burden” small companies that are entitled to streamlined regulation, why should it burden CLECs that are also entitled to streamlined regulation? Staff’s arguments ignore the real underlying regulatory policy that should drive the interpretation and application of WAC 480-120-439. This policy has nothing to do with the number of access lines served by a company, which, as explained in the Declaration

circumvent established precedent and behavior. Second, Comcast Phone contends that the facts here are far from simple given the confusion surrounding the rulemaking and how the new reporting rules fit in with the rest of the WACs, RCWs, and legislative mandates.

of Rhonda Weaver, is a moving target, at best.⁷ Rather, the proper regulatory concern is protecting captive customers of a monopoly provider from poor service quality.⁸ Because CLEC customers are not captive, they have the protection of competitive choice, regardless of the size of the CLEC. A CLEC possessing “two percent” of state access lines clearly does not come close to monopoly provider status. In sum, there is no regulatory policy reason to impose cumbersome service quality reporting requirements on CLECs, unless the Commission were to ignore the entire competitive purpose and structure of RCW 80.36.300 *et seq.*

E. THE PENALTY ISSUED AGAINST COMCAST PHONE SHOULD BE COMPLETELY MITIGATED, BECAUSE THE COMMISSION ERRED BY PRE-MATURELY DETERMINING THAT COMCAST PHONE HAD VIOLATED THE NEW REPORTING RULES.

Washington citizens are protected from arbitrary laws and enforcement and are entitled to know what the law expects of them before they can be found in violation of it. *See, e.g., State v. Williams*, 144 Wn.2d 197, 26 P.3d 890 (2001); *Giacco v. Pennsylvania*, 382 U.S. 399, 402-403 (1966) (“It is established that a law fails to meet the requirements of the Due Process Clause if it is so vague and standardless that it leaves the public uncertain as to the conduct it prohibits or leaves judges and jurors free to decide, without any legally fixed standards, what is prohibited and what is not in each particular case.”). A regulation is unconstitutionally vague if persons of common intelligence must necessarily guess at its meaning and disagree as to its application. *Longview Fibre Co. v. State Dept. of Ecology*, 89 Wn. App. 627, 649 P.2d 8951 (1998).

Here, a penalty was issued against Comcast Phone before CLECs across the state knew whether the Class A/B distinction and the new reporting rules applied to them. CLECs were without knowledge that the new reporting rules could not have applied to them, for several

⁷ It is entirely possible for a CLEC’s access count to fluctuate above and below the 2% threshold, rendering it subject to costly and inconsistent reporting requirements. As Ms. Weaver explains in the attached Declaration, Comcast Phone has lost approximately 18% of its access lines in the past year.

⁸ *See* discussion of legislative history of RCW 80.36.320 in *U.S. West v. Utilities Comm’n*, 86 Wn. App. 719, 728, 937 P.2d 1326 (1977).

reasons: The Commission failed to notify CLECs that it planned to dramatically change the way reporting rules were to be applied to CLECs in this state; the Commission is under a legislative mandate to limit regulation of CLECs; application of the new reporting rules to CLECs is not clear from the rules; the change in reporting rules contradicts long-term policy that recognizes that competition supplants regulation. Therefore, as a matter of fundamental fairness, the penalty against Comcast Phone should be fully mitigated. More important, as explained in its motion, the penalty assessment here fails all of the criteria established by this Commission for penalties.

Staff argues that the Commission can ignore the criteria it established for imposition of penalties in *MCI Metro Access Transmission Services, Inc. v. U.S. West Communications, Inc.*, Docket No. UT-971063. This position admits that the penalty here does not satisfy that criteria. Staff essentially advocates that the Commission pursue an arbitrary and capricious course of action by setting standards in one case but changing them in another to produce the result Staff wants achieved.

Staff feebly tries to distinguish the *MCI Metro* case from this one claiming the facts of the former case were more complex. (Motion p. 12). That different cases have different facts does not justify arbitrary avoidance of Commission-established regulatory policy on penalties which should apply generally under all factual scenarios.

Staff tries to justify the penalty claiming “there is nothing new about reporting requirements being different for small companies” (Motion p.12). This ignores the fact that this case does deal with the unsettled issue of whether CLECs, which are subject to streamlined regulation just like smaller ILECs, lose such regulation when they grow and succeed.

Staff also contends Comcast Phone “should have known” because the Staff told the Company it must report. (Motion p.12). If this view were to prevail, no company could have a good faith difference in view from the Staff without fear of recrimination in the form of a penalty recommendation from the Staff to the Commission.

As Ms. Weaver explains in her Declaration, Staff said it would recommend a complaint not a penalty, which has very different procedural consequences to the Company.⁹ For instance, had the Staff brought a complaint it would have born the burden of proof. *GTE Northwest, Inc. v. Whidbey Island*, Docket No. UT-950277, 1996 Wash. UTC Lexis 23. By getting the Commission to assess a penalty, the Staff avoided this burden.

At the very least, the penalty assessment was not anticipated by the Company that was involved in ongoing discussions with the Staff to resolve this dispute. As Ms. Weaver also explains in her Declaration, contrary to the picture Staff tries to paint (i.e., Motion p.16), Comcast Phone certainly was engaged in efforts to provide alternatives to the Staff “other than not to report.” (Motion p.16).

In light of the good faith difference of opinion as to the meaning of the new reporting rules, Comcast Phone submits that a determination that Comcast Phone (or any CLEC) was in violation of those rules was unwarranted and certainly premature. Comcast Phone asserts that, at the very least, the application of the new reporting rules must be clarified, justified, and made consistent with existing laws, regulations and legislative mandates in Washington State, before any entity may be found to be non-compliant.

F. QWEST’S SELF-SERVING ARGUMENTS DO NOT SUPPORT APPLICATION OF CLASS A REGULATION TO CLECS.

Qwest provides no additional assistance to the Commission to resolve the current dispute. It merely advances its self-serving interest in slowing competition by adding more burdens on its competitors. Indeed, its position of “regulatory parity” now contradicts its recently announced national position that advocates minimal regulation for its own competitive services such as

⁹ The practice of assessing penalties after a complaint case is far more common in Commission practice than a stand-alone penalty assessment. *Re U.S. West Communications, Inc.*, Docket No. UT-003022, Docket No. UT-003040, 40th Suppl. Order ¶ 295 (2002)(“If after considering a complaint ... the Commission determines [a violation has occurred] then the Commission can and will impose appropriate penalties”); *WUTC v. Frog Pond Waters, Inc.*, Docket No. UW-020822, Docket No. UW-021140 (Commission issued a complaint and notice that a penalty up to \$22,000 may be assessed); *Re GTE Northwest, Inc.*, Docket No. UT-910499, 6th Suppl. Order (1994).

Voice over Internet Protocol (“VoIP”). Indeed, Qwest has announced plans to offer IP phone services throughout its 14-state region by the end of the 2004.¹⁰ In fact, Qwest Chief Executive Officer Richard Notebaert has stated expressly that Qwest’s “objective in offering VoIP services [is] to take this journey as the path to deregulation.”¹¹ Therefore, Qwest’s arguments in this proceeding, which seek to impose additional regulatory burdens on its competitors, are at odds with its own regulatory philosophy, and therefore they should carry little weight.

G. PUBLIC COUNSEL’S POSITION IS ILLOGICAL AND MISCONSTRUES COMCAST PHONE’S POSITION

Public Counsel makes the illogical argument that because CLECs are subject to some, but not all, of the new service quality rules, they therefore must be subject to the new service quality reporting rules. All CLECs are subject to such service quality rules and Comcast Phone has never contended otherwise. Therefore, under Public Counsel’s rationale, all CLECs (big and small) should have the same reporting requirements – a view not even advocated by the Commission Staff. No party – Staff, Public Counsel or Qwest – has ever explained why a company meeting the two percent threshold gives rise to greater consumer concern than companies operating under this magic limit. They cannot because they confuse the purpose of the “two percent threshold,” which is to streamline regulation for small ILECs, with consumer protection goals which should draw no distinction between large and small companies. The real regulatory concern here is with abuse of power by large monopoly providers, something which CLECs, by definition, cannot bring about.

In sum, Public Counsel provides no reason to reject Comcast Phone’s interpretation of WAC 480-120-439.

¹⁰ TR Daily, *Qwest CEO Sees VOIP Rollout Throughout Region by Next Year* (Dec. 4, 2003).

¹¹ See Steve Alexander, *Qwest Signals Support of Net Phone Service*, Star-Tribune (Minneapolis-St. Paul), Nov. 5, 2003.

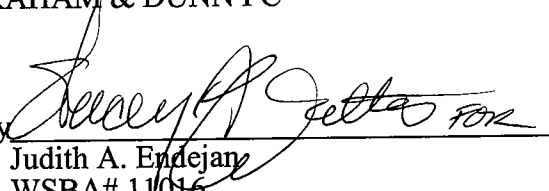
III. CONCLUSION.

For all of the reasons contained herein, Comcast Phone requests that the Commission determine that WAC 480-120-439 does not apply to Comcast Phone, and that the Commission penalty be completely mitigated.

DATED this 23rd day of December 2003.

GRAHAM & DUNN PC

By


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Attorneys for Comcast Phone of Washington, LLC

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STATE OF WASH.
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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,)
COMCAST PHONE OF WASHINGTON, LLC) No. UT-031459/UT-031626
DECLARATION OF RHONDA WEAVER
IN SUPPORT OF COMCAST PHONE
REPLY

1. I, Rhonda Weaver, make this declaration based upon personal knowledge.

2. I am the Director of Governmental and Regulatory Affairs for Comcast Phone of Washington, LLC ("Comcast Phone" or the "Company"). My business address is 440 Yauger Way S.W., Olympia, Washington 99802.

3. In the declaration I previously submitted in this case, I described my duties and responsibilities. The purpose of this declaration is to respond to the Amended Declaration of Glenn Blackmon and to provide the Commission with additional information regarding the legislative history of RCW 80.04.530 and Comcast Phone's current access line count.

4. At paragraph 14 of his Declaration, Mr. Blackmon alleges that "Comcast Phone was not acting in good faith to resolve the issue when the WUTC issued the penalty assessment." This is incorrect. At all times during my communications with Staff, I advised Staff that the Company intended to seek a clarification from the Commission as to the applicability of the

1 service quality reporting requirements in WAC 480-120-439 to the Company or to seek a partial
2 or complete exemption from that rule.

3 5. Staff at no time advised Comcast Phone that it would seek a penalty assessment
4 against the Company for failure to comply with WAC 480-120-439. Instead, Staff told me that it
5 would recommend the filing of a complaint, which in my mind is an entirely different procedure
6 than an automatic penalty assessment.

7 6. At paragraph 6 of his Declaration, Mr. Blackmon claims that I never asked Staff
8 for assistance in interpreting whether the term "Class A company" included CLECs such as
9 Comcast Phone. I never asked this question because neither I, nor any other member of the
10 CLEC community, interpreted the new rules as applying to a CLEC. Rather, as discussed
11 throughout this proceeding, it had been Comcast Phone's understanding all along that the term
12 "Class A company" does not include, and was not intended to include, CLECs.

13 7. Comcast Phone did make efforts to ascertain an accurate total state access line
14 count. I contacted a member of the Commission's Records Center and was told that compilation
15 of this data would be extremely cumbersome and time-consuming. Line count information is
16 submitted by many companies on a confidential basis. Thus, before Comcast Phone could
17 assemble a total state line count figure from filed reports with the Commission, Comcast Phone
18 and Commission Staff would have to go to court in order to get this information. Indeed, I have
19 learned that AT&T did go to court to prevent the Commission from automatically disclosing its
20 line count information. Thus, the act of compiling accurate total state access line count data
21 would be formidable at the very least and I did not feel that I would be able to compile it in time
22 to make the filings we intended to make. It has been Comcast Phone's contention since this issue
23 first arose that the Staff is better equipped to compile this information and to develop a
24 composite figure than any individual company. Indeed, Staff did finally provide the figure on
25 October 30, 2003.

1 8. The reason that an accurate total access line count is important is because it is
2 entirely possible for a CLEC to fall below the 2% threshold figure even after it has once
3 exceeded that threshold. As demonstrated by Comcast Phone's recent experience, CLEC access
4 line count change can vary dramatically from year-to-year, which means that it is entirely
5 possible that a CLEC may be subject to the reporting requirements in one year but not in another.
6 Due to a refocus by Comcast Phone on improving its operations inherited from AT&T
7 Broadband, Comcast Phone's access line count dropped dramatically from a figure of 117,535 as
8 of December 31, 2002 to 96,430 as of December 15, 2003.

9 9. Staff has alleged throughout that the 2% threshold for compliance with certain
10 regulations mirrors the threshold set forth in RCW 80.04.530, which exempts
11 telecommunications companies serving fewer than 2% of the access lines in Washington from
12 certain statutory reporting requirements. I conducted an analysis of the legislative history behind
13 that statute. Attached hereto are documents that I obtained in my research. They show that the
14 legislative intent behind RCW 80.04.530 was to exempt small incumbent local exchange
15 companies represented by the Washington Independent Telephone Association from certain
16 recording requirements. The House Bill Report clearly demonstrates that the new law was to
17 apply to small ILECs, of which there were 17 at the time. Thus the intent was to exempt small
18 ILECs from certain statutory reporting requirements. This legislative history demonstrates that
19 the Class A/Class B distinction, from the legislature's standpoint, applied only to ILECs.

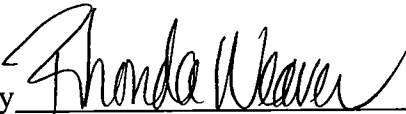
20 10. Dr. Blackmon insinuates in his Declaration that Comcast Phone was unwilling or
21 dragged its feet in attempting to work out with Commission Staff an alternative reporting
22 mechanism to resolve this controversy. That is simply incorrect. As is readily apparent from
23 Comcast Phone's prior Declaration in this proceeding, Comcast Phone actively engaged Staff in
24 repeated attempts to obtain a realistic resolution of this matter both before and after the
25 November 17, 2003 prehearing conference. Comcast Phone participated in ongoing settlement
26

1 discussions including a meeting with Dr. Blackmon and other Staff members, a Comcast Phone
2 vice president and myself, on December 2, 2003.

3 11. On December 5, 2003 we received Staff's Motion for Summary Determination
4 and Declaration of Glenn Blackmon in which he stated that Comcast Phone had not been willing
5 to work on an alternate method of reporting and that we had never brought in a subject matter
6 expert. We requested that Dr. Blackmon amend his Declaration to reflect the facts of our
7 repeated attempts to work things out with Staff. He filed an Amended Declaration on December
8 16, 2003.

9 I declare under penalty of perjury under the laws of the State of Washington that the
10 foregoing is true and correct.

11 Executed at Seattle, Washington this 22 day of December 2003.

12
13
14 By 
Rhonda Weaver

ATTACHMENT A

another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.400.

(4) For sentences imposed pursuant to RCW 9.94A.120(6) which have a sentence range of over one year, notwithstanding any other provision of this section all such sentences regardless of length shall be served in a facility or institution operated, or utilized under contract, by the state.

NEW SECTION. Sec. 5. The commission shall evaluate the impact of implementing the drug offender options provided for in RCW 9.94A.120(6). The commission shall submit preliminary findings to the legislature by December 1, 1996, and shall submit the final report to the legislature by December 1, 1997. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates.

NEW SECTION. Sec. 6. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately.

Passed the House March 13, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 109

[Substitute House Bill 1671]

COMMODITY COMMISSIONS—AUTHORITY TO RAISE ASSESSMENT RATES

AN ACT Relating to agricultural commodity commissions; adding a new section to chapter 15.65 RCW; adding a new section to chapter 15.26 RCW; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 15.65 RCW to read as follows:

The hop commodity board may raise the rate of annual assessment in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of two dollars and fifty cents per affected unit in effect under chapter 16-532 WAC on the effective date of this act to three dollars per affected unit. For this purpose, the affected unit is two hundred pounds net of hops or the amount of lupulin, extract, or oil produced from two hundred pounds net of hops.

The mint commodity board may raise the rate of annual assessment in excess of the fiscal growth factor under chapter 43.135 RCW from the

assessment of three and one-half cents per affected unit in effect under chapter 16-540 WAC on the effective date of this act to five cents per affected unit. For this purpose, the affected unit is one pound of mint oil as distilled from mint-plants grown by an affected producer and as weighed by the first purchaser.

The assessment limits established by this section are set solely to provide prior legislative authority for the purposes of RCW 43.135.055 and may not be construed as providing a limitation on the authority of either commodity board to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under the authority of this section shall be made in compliance with the procedural requirements established by this chapter for altering or amending such assessments.

NEW SECTION. Sec. 2. A new section is added to chapter 15.26 RCW to read as follows:

The Washington tree fruit research commission may raise the assessment on cherries in excess of the fiscal growth factor under chapter 43.135 RCW from the assessment of two dollars per ton in effect under chapter 16-560 WAC on the effective date of this act to four dollars per ton. The commission may also establish an additional assessment on all tree fruits under RCW 15.26.155 of not more than eight cents per ton.

The assessment limits established by this section are set solely to provide prior legislative authority for the purposes of RCW 43.135.055 and may not be construed as providing a limitation on the authority of the tree fruit research commission to alter assessments in any manner not limited by RCW 43.135.055. However, any alteration in assessments made under the authority of this section shall be made in compliance with the procedural requirements established by this chapter for altering or amending such assessments.

NEW SECTION. Sec. 3. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995.

Passed the House March 15, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.



CHAPTER 110

[Substitute House Bill 1744]

TELECOMMUNICATIONS—STREAMLINED REGULATION OF SMALL COMPANIES

AN ACT Relating to streamlined regulation of small telecommunications companies; amending RCW 80.36.135; adding a new section to chapter 80.04 RCW; adding a new section to chapter 80.08 RCW; adding a new section to chapter 80.12 RCW; and adding a new section to chapter 80.16 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 80.04 RCW to read as follows:

(1)(a) Except as provided in (b) of this subsection, the following do not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington: RCW 80.04.080, 80.04.300 through 80.04.330, and, except for RCW 80.08.140, chapters 80.08, 80.12, and 80.16 RCW.

(b) Nothing in this subsection (1) shall affect the commission's authority over the rates, service, accounts, valuations, estimates, or determinations of costs, as well as the authority to determine whether any expenditure is fair, reasonable, and commensurate with the service, material, supplies, or equipment received.

(c) For purposes of this subsection, the number of access lines served by a local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.

(2) Any local exchange company for which an exemption is provided under this section shall not be required to file reports or data with the commission, except each such company shall file with the commission an annual report that consists of its annual balance sheet and results of operations, both presented on a Washington state jurisdictional basis. This requirement may be satisfied by the filing of information or reports and underlying studies filed with exchange carrier entities or regulatory agencies if the jurisdictionally separated results of operations for Washington state can be obtained from the information or reports. This subsection shall not be applied to exempt a local exchange company from an obligation to respond to data requests in an adjudicative proceeding in which it is a party.

(3) The commission may, in response to customer complaints or on its own motion and after notice and hearing, establish additional reporting requirements for a specific local exchange company.

NEW SECTION. Sec. 2. A new section is added to chapter 80.08 RCW to read as follows:

Subject to section 1(1) of this act, this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington.

NEW SECTION. Sec. 3. A new section is added to chapter 80.12 RCW to read as follows:

Subject to section 1(1) of this act, this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington.

NEW SECTION. Sec. 4. A new section is added to chapter 80.16 RCW to read as follows:

Subject to section 1(1) of this act, this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington.

Sec. 5. RCW 80.36.135 and 1989 c 101 s 1 are each amended to read as follows:

(1) The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.36.300, this section, and RCW 80.36.145. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

(2) Subject to the conditions set forth in this chapter and RCW 80.04.130, the commission may regulate telecommunications companies subject before July 23, 1989, to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate. In addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

(a) Reduce regulatory delay and costs;

(b) Encourage innovation in services;

(c) Promote efficiency;

(d) Facilitate the broad dissemination of technological improvements to all classes of ratepayers;

(e) Enhance the ability of telecommunications companies to respond to competition;

(f) Ensure that telecommunications companies do not have the opportunity to exercise substantial market power absent effective competition or effective regulatory constraints; and

(g) Provide fair, just, and reasonable rates for all ratepayers.

The commission shall make written findings of fact as to each of the above-stated policy goals in ruling on any proposed alternative form of regulation.

(3) A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to ~~(regulate the company under)~~ establish an alternative form of regulation. The company or companies shall submit with ~~(the)~~ the petition ~~(the company's)~~ a plan for an alternative form of regulation. The plan shall contain ~~(the company's)~~ a proposal for transition to the alternative form of regulation. The commission shall review and may modify or reject the ~~(company's)~~ proposed plan. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission may approve the plan or

modified plan and authorize its implementation, if it finds, after notice and hearing, that the plan or modified plan:

- (a) Is in the public interest;
- (b) Is necessary to respond to such changes in technology and the structure of the intrastate telecommunications industry as are in fact occurring;
- (c) Is better suited to achieving the policy goals set forth in RCW 80.36.300 and this section than the traditional rate of return, rate base regulation;
- (d) Ensures that ratepayers will benefit from any efficiency gains and cost savings arising out of the regulatory change and will afford ratepayers the opportunity to benefit from improvements in productivity due to technological change;
- (e) Will not result in a degradation of the quality or availability of efficient telecommunications services;
- (f) Will produce fair, just, and reasonable rates for telecommunications services; and
- (g) Will not unduly or unreasonably prejudice or disadvantage any particular customer class.

(4) Not later than sixty days from the entry of the commission's order, the company or companies affected by the order may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission. If ~~(the)~~ a company elects to appeal to the courts the final order of the commission authorizing an alternative form of regulation, it shall not change its election to proceed or not proceed after the appeal is concluded. The pendency of a petition by ~~(the)~~ a company for judicial review of the final order shall not serve to extend the sixty-day period.

(5) The commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section: PROVIDED, That the commission may not grant the authority to price list services except as provided in RCW 80.36.300 through 80.36.370, the regulatory flexibility act, nor may it waive any statutory requirements or grants of legal rights to any person contained in this chapter and chapter 80.04 RCW as amended, except as otherwise expressly provided. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.

(6) Upon petition by any person, or upon its own motion, the commission may rescind its approval of an alternative form of regulation if, after notice and hearing, it finds that the conditions set forth in subsection (3) of this section can no longer be satisfied. The commission or any person may file a complaint alleging that the rates charged by a telecommunications company under an alternative form of regulation are unfair, unjust, unreasonable, unduly discriminatory, or are otherwise not consistent with the requirements of this act: PROVIDED, That the complainant shall bear the burden of proving the allegations in the complaint.

Passed the House February 22, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

CHAPTER 111

[Substitute House Bill 1777]

SCHOOL BOND LEVIES—DISCLOSURE OF USE OF PROCEEDS

AN ACT Relating to the disclosure of proceeds from a school bond levy; and amending RCW 28A.535.020.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. RCW 28A.535.020 and 1990 c 33 s 481 are each amended to read as follows:

Whenever the board of directors of any school district shall deem it advisable to validate and ratify the indebtedness mentioned in RCW 28A.535.010, they shall provide therefor by resolution, which shall be entered on the records of such school district, which resolution shall provide for the holding of an election for the purpose of submitting the question of validating and ratifying the indebtedness so incurred to the voters of such school district for approval or disapproval, and if at such election three-fifths of the voters in such school district voting at such election shall vote in favor of the validation and ratification of such indebtedness, then such indebtedness so validated and ratified and every part thereof existing at the time of the adoption of said resolution shall thereby become and is hereby declared to be validated and ratified and a binding obligation upon such school district. The resolution adopted by the board of directors shall specify the purposes of the debt financing measure, including the specific buildings to be constructed or remodelled and any additional specific purposes as authorized by RCW 28A.530.010. If the debt financing measure anticipates the receipt of state financing assistance under chapter 28A.525 RCW, the board resolution also shall describe the specific anticipated purpose of the state assistance. If the school board subsequently determines that state or local circumstances should cause any alteration to the specific expenditures from the debt financing or of the state assistance, the board shall first conduct a public hearing to consider those circumstances and to receive public testimony. If the board then determines that any such alterations are in the best interests of the district, it may adopt a new resolution or amend the original resolution at a public meeting held subsequent to the meeting at which public testimony was received.

Passed the House March 14, 1995.

Passed the Senate April 7, 1995.

Approved by the Governor April 19, 1995.

Filed in Office of Secretary of State April 19, 1995.

ESHB 1741

C 2 L 95 E2

Providing moneys for wine and wine grape research.

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler and Mastin).

House Committee on Agriculture & Ecology
House Committee on Appropriations
Senate Committee on Agriculture & Agricultural Trade & Development

Background: The operating budget for the 1995-97 biennium dedicates \$525,000 of the appropriation made to Washington State University (WSU) to wine and wine grape research. The dedicated portion of the appropriation lapses unless this bill is enacted.

Summary: The legislature provides its intent to fund wine and wine grape research at WSU during the 1995-97 biennium.

Votes on Final Passage:

House 89 5

First Special Session

House 83 11

Senate 47 0

Effective: August 24, 1995



SHB 1744

C 110 L 95

Regulating small telecommunications companies.

By House Committee on Energy & Utilities (originally sponsored by Representatives Huff, Kessler, Casada and Campbell).

House Committee on Energy & Utilities
Senate Committee on Energy, Telecommunications & Utilities

Background: Local exchange companies (LECs) provide local telephone service within their exchange boundaries. Washington currently has 21 LECs, which are regulated by the Washington Utilities and Transportation Commission (WUTC). The smallest 17 companies each serve less than 2 percent of the switched access (telephone) lines in the state.

Annual Reports and Budgets: All LECs, regardless of size and like other utilities whose rates and service are regulated by the WUTC, are required by statute to file detailed annual reports and budgets with the WUTC. The WUTC may require additional information and, after a notice and hearing, may reject any item of a budget. Unless an LEC is making expenditures in response to an emergency, the statutory budget provisions apply. An LEC proceeding with a rejected expenditure may not count that

expenditure as an operating expense or as part of the fair value of company property that is used and useful in serving the public, except upon proof that the expenditure is used and useful.

The WUTC may adopt budget rules and may exempt companies in whole or in part from those budget rules.

Securities: As a "public service company," an LEC may issue: (1) evidence of interest or ownership such as stocks and stock certificates; and (2) evidence of indebtedness such as bonds and notes. State law specifies the purposes for which these issuances may be used.

Prior to issuing evidence of interest or ownership or evidence of indebtedness, the public service company must file with the WUTC a description of the issuance and its purposes, terms of financing, and a statement of why the issuance is in the public interest. The WUTC may require a public service company to account for the disposition of all proceeds of the sale of all such issuances and it may adopt rules and regulations to insure the proper disposition of these proceeds.

Transfers of Property: As with other "public service companies," an LEC may sell, lease, assign, or otherwise dispose of all or any part of its franchises, properties, or facilities that are necessary in the performance of its duties to the public only with the authorization of the WUTC. No LEC may merge or consolidate any of its franchises, properties, or facilities with other public service companies without the authorization of the WUTC. Similarly, no LEC may purchase, acquire, or become the owner of franchises, properties, facilities, or capital stocks or bonds of another public service company without prior authorization of the WUTC. The WUTC may adopt rules and regulations to administer these requirements.

Affiliated Interests: As a "public service company," an LEC may enter into: (1) a contract or arrangement with an affiliated interest for providing such things as management, supervisory construction, engineering, accounting, legal, or financial services; or (2) a contract or arrangement with an affiliated interest providing for the sale, lease, or exchange of property only with approval of the WUTC. An affiliated interest essentially is a company or person holding 5 percent or more of the voting securities in the company.

Alternative Forms of Regulation: Telecommunications companies are regulated under a "rate of return" system. Under certain circumstances, telecommunications companies can be regulated in ways other than the traditional "rate of return" regulation. For example, a telecommunications company may petition the WUTC to be regulated under an "alternative form of regulation."

A telecommunications company may submit a petition to the WUTC proposing a plan for an alternative form of regulation. Prior to approving the plan, the WUTC must consider a number of factors. These factors include the extent to which the proposed form of regulation will reduce regulatory delay and costs, encourage innovation in services, promote efficiency, enhance the company's abil-

SHB 1756

ity to respond to competition, provide fair, just, and reasonable rates for all rate payers, and prevent companies from exercising substantial market power in the absence of competition or regulation. The WUTC also can initiate consideration of an alternative form of regulation for a telecommunications company. A company has 60 days to elect not to proceed with the alternative form of regulation as authorized by the WUTC.

Summary: Annual Reports and Budgets: Any LEC that serves less than 2 percent of the access lines in the state (including access lines served by any affiliate of the LEC) is exempt from the detailed annual reporting and budgeting requirements which currently apply to all public service companies. These smaller LECs are not required to submit reports or data to the WUTC except for annual balance sheets and results of operations in Washington State that are separated by jurisdiction. Existing information or reports that are separated by jurisdiction may be sufficient to meet these requirements. In response to customer complaints or on its own, after notice and hearing, the WUTC may establish additional reporting requirements for a specific LEC.

Securities, Transfers of Property, and Affiliated Interests: Any LEC that serves less than 2 percent of the access lines in the state (including access lines served by any affiliate of the LEC) is exempt from authorization and reporting requirements relating to issuance of securities, transfers of property and affiliated interests. In the case of securities, the state of Washington is not obligated to pay or guarantee stock, stock certificates, bonds, or other evidence of ownership or indebtedness issued by an LEC.

Alternative Form of Regulation: A group of telecommunications companies may petition the WUTC to establish an alternative form of regulation.

Votes on Final Passage:

House	98	0
Senate	39	0



Effective: July 23, 1995

SHB 1756

C 313 L 95

Changing provisions relating to dependent children.

By House Committee on Children & Family Services (originally sponsored by Representatives Veloria, Cooke, Cody, Lambert, Thibaudeau, Patterson and Costa).

House Committee on Children & Family Services
Senate Committee on Human Services & Corrections

Background: If a child is found dependent by the court, the child may be placed with a relative or in a foster care home. Court hearings related to the child's dependency are closed to the general public and the judge may allow a

relative caring for the child or the child's foster parent to attend and provide information about the child to the court.

Summary: The court is required to allow relatives or foster parents caring for a dependent child to attend court proceedings and provide the court with information and evidence about the child to the court, unless the court states on the record why the person should not be allowed to attend.

Votes on Final Passage:

House	98	0	
Senate	43	0	(Senate amended)
House	93	0	(House concurred)

Effective: July 23, 1995

HB 1761

C 69 L 95

Clarifying physical conditions for determining the output of major energy projects.

By Representatives Casada, Hankins, Patterson, Crouse, Huff, Carlson, Morris, Mielke, Mitchell and Kessler.

House Committee on Energy & Utilities
Senate Committee on Energy, Telecommunications & Utilities

Background: In 1970, the Legislature created the Energy Facility Site Evaluation Council (EFSEC) to coordinate the evaluation, siting, and licensing of major non-hydroelectric energy facilities. EFSEC has rulemaking authority.

For facilities falling within its jurisdiction, EFSEC: (1) evaluates the impacts of energy facility proposals; (2) recommends to the Governor whether to approve an energy facility application; (3) imposes conditions on approved projects to ensure safe construction and operation and to minimize adverse impacts; (4) monitors construction, operation, and eventual decommissioning of energy facilities; and (5) enforces compliance with site certification conditions.

Thermal power plants (electricity-generating facilities using fuel, such as gas-fired combined-cycle combustion turbines) of at least 250 megawatts are within EFSEC's jurisdiction.

In 1981, voters approved Initiative No. 394, the Washington State Energy Financing Voter Approval Act. Under the act, a local government is prohibited from selling bonds to finance the construction or acquisition of major electrical generating facilities, which are facilities intended to generate more than 250 megawatts of electricity, unless the voters of the local government approve a ballot proposition authorizing the expenditure of the funds. Provisions are made for the preparation of a cost-effectiveness study of the project by an independent consultant and preparation of a special voters' pamphlet on the proposal that is distrib-

SENATE BILL REPORT

SHB 1744

As of March 15, 1995

Title: An act relating to streamlined regulation of small telecommunications companies.

Brief Description: Regulating small telecommunications companies.

Sponsors: House Committee on Energy & Utilities (originally sponsored by Representatives Huff, Kessler, Casada and Campbell).

Brief History:

Committee Activity: Energy, Telecommunications & Utilities: 3/16/95.

SENATE COMMITTEE ON ENERGY, TELECOMMUNICATIONS & UTILITIES

Staff: David Danner (786-7784)

Background: State law requires local exchange companies (LECs) to file detailed annual reports and budgets with the Washington Utilities and Transportation Commission (WUTC). The WUTC may require additional information and, after notice and hearing, reject any budget item. Where an expenditure is rejected, the LEC may not count it as an operating expense as part of the fair value of the company.

State law also requires LECs, as "public service companies," to file a description of all stock or bond issuances and a statement as to why such issuances are in the public interest. A LEC may not transfer property which is necessary to the performance of its duties without prior authorization of the WUTC. It may not purchase property of another public service company without WUTC approval.

Moreover, LECs must obtain WUTC approval to contract with an affiliated interest (i.e., a company or person holding 5 percent or more of voting stock in the LEC) for such things as management, supervisory construction, engineering, accounting, legal or financial services, or for the sale, lease, or exchange of property.

Summary of Bill: Any LEC which serves fewer than 2 percent of the access lines in the state is exempt from the detailed annual reporting and budgeting requirements that currently apply to all public service companies. These smaller LECs are not required to submit reports or data to the WUTC, except for annual balance sheets and results of operations in Washington State, separated by jurisdiction, and existing information or reports may be sufficient to meet these requirements. The WUTC may establish, either on its own or in response to customer complaints, additional reporting requirements for a specific LEC.

Any LEC which serves fewer than 2 percent of the access lines in the state is exempt from authorization and reporting requirements relating to issuance of securities, transfers of property and affiliated interests. In the case of securities, the state is not obligated

to pay or guarantee stock, bonds, or other evidence of ownership or indebtedness issued by a LEC.

A group of telecommunications companies may petition the WUTC to establish an alternative form of regulation.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

**S.H.B. 1744 -- SMALL TELECOMMUNICATIONS COMPANIES
FLOOR NOTES**

WHAT THE BILL DOES

- ** EXEMPTS SMALL TELEPHONE COMPANIES -- THOSE WHICH SERVE FEWER THAN 2 PERCENT OF ACCESS LINES IN THE STATE -- FROM DETAILED REPORTING AND BUDGETING REQUIREMENTS THAT CURRENTLY APPLY TO ALL TELEPHONE COMPANIES. THESE INCLUDE REPORTING REQUIREMENTS FOR SECURITIES ISSUANCES, PROPERTY TRANSFERS, AND DEALINGS WITH AFFILIATED INTERESTS.
- ** DOES NOT AFFECT THE ABILITY OF WUTC TO ESTABLISH, ON ITS OWN OR IN RESPONSE TO CUSTOMER COMPLAINTS, SPECIFIC REPORTING REQUIREMENTS FOR A PARTICULAR COMPANY.
- ** A GROUP OF TELECOMMUNICATIONS COMPANIES MAY PETITION THE WUTC TO ESTABLISH AN ALTERNATIVE FORM OF REGULATION.

WHY THE BILL IS NEEDED

- ** CURRENT STATE LAW REQUIRES PHONE COMPANIES TO SUBMIT TO WUTC DETAILED ANNUAL REPORTS AND BUDGETS, AS WELL AS DESCRIPTIONS OF ALL STOCK ISSUANCES. IT ALSO REQUIRES WUTC APPROVAL OF TRANSFERS OF PROPERTY WHICH MAY BE NECESSARY TO THE PERFORMANCE OF ITS DUTIES.
- ** WUTC STATED AT HEARING THAT THESE REQUIREMENTS ARE NOT NECESSARY FOR ADEQUATE REGULATORY OVERSIGHT OF SMALL PHONE COMPANIES.
- ** IMPOSES UNNECESSARY REGULATORY COSTS ON SMALL PHONE COMPANIES AND ON WUTC.

HOUSE BILL REPORT SHB 1744

As Passed Legislature

Title: An act relating to streamlined regulation of small telecommunications companies.

Brief Description: Regulating small telecommunications companies.

Sponsors: By House Committee on Energy & Utilities (originally sponsored by Representatives Huff, Kessler, Casada and Campbell).

Brief History:

Committee Activity:

Energy & Utilities: 2/14/95, 2/15/95 [DPS].

Floor Activity:

Passed House: 2/22/95, 98-0.

Passed Legislature.

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Kessler, Ranking Minority Member; Kremen, Assistant Ranking Minority Member; Chandler; Huff; Mastin; Mielke; Mitchell and Patterson.

Staff: Margaret Allen (786-7110) and Ken Conte (786-7102).

Background: Local exchange companies (LECs) provide local telephone service within their exchange boundaries. Washington currently has 21 LECs, which are regulated by the Washington Utilities and Transportation Commission (WUTC). The smallest 17 companies each serve less than 2 percent of the switched access (telephone) lines in the state.

Annual Reports and Budgets: All LECs, regardless of size and like other utilities whose rates and service are regulated by the WUTC, are required by statute to file detailed annual reports and budgets with the WUTC. The WUTC may require additional information and, after a notice and hearing, may reject any item of a budget. Unless a LEC is making expenditures in response to an emergency, the statutory budget provisions apply. A LEC proceeding with a rejected expenditure may not count that expenditure as an operating expense or as part of the fair value of the company's property used and useful in serving the public, except upon proof the expenditure is used and useful.

The WUTC may adopt budget rules and may exempt companies in whole or in part from those budget rules.

Securities: As a "public service company," a LEC may issue: (1) evidence of interest or ownership such as stocks and stock certificates; and (2) evidence of

indebtedness such as bonds and notes. State law specifies the purposes for which these issuances may be used.

Prior to issuing evidence of interest or ownership or evidence of indebtedness, the public service company must file with the WUTC a description of the issuance and its purposes, terms of financing, and a statement as to why the issuance is in the public purpose. The WUTC may require a public service company to account for the disposition of all proceeds of the sale of all such issuances and it may adopt rules and regulations to insure the proper disposition of these proceeds.

Transfers of Property: As with other "public service companies," a LEC may sell, lease, assign or otherwise dispose of all or any part of its franchises, properties or facilities which are necessary in the performance of its duties to the public only with the authorization of the WUTC. No LEC may merge or consolidate any of its franchises, properties or facilities with other public service companies without the authorization of the WUTC. Similarly, no LEC may purchase, acquire, or become the owner of franchises, properties, facilities, or capital stocks or bonds of another public service company without prior authorization of the WUTC. The WUTC may adopt rules and regulations to administer these requirements.

Affiliated Interests: As a "public service company," a LEC may enter into: (1) a contract or arrangement with an affiliated interest for providing such things as management, supervisory construction, engineering, accounting, legal or financial services; or (2) a contract or arrangement with an affiliated interest providing for the sale, lease, or exchange of property only with approval of the WUTC. An affiliated interest is basically a company or person holding 5 percent or more of the voting securities in the company.

Alternative Forms of Regulation: Currently, telecommunications companies are regulated under a "rate of return" system. Under certain circumstances, telecommunications companies can be regulated in ways other than the traditional "rate of return" regulation. For example, a telecommunications company may petition the WUTC to be regulated under an "alternative form of regulation."

A telecommunications company may submit a petition to the WUTC proposing a plan for an alternative form of regulation. Prior to approving the plan, the WUTC must consider a number of factors. These factors include the extent to which the proposed form of regulation will reduce regulatory delay and costs, encourage innovation in services, promote efficiency, enhance the company's ability to respond to competition, provide fair, just, and reasonable rates for all rate payers, and prevent companies from exercising substantial market power in the absence of competition or regulation. The WUTC also can initiate consideration of an alternative form of regulation for a telecommunications company. A company has 60 days to elect not to proceed with the alternative form of regulation as authorized by the WUTC.

Summary of Bill: Annual Reports and Budgets: Any LEC which serves less than 2 percent of the access lines in the state (including access lines served by any affiliate of the LEC) is exempt from the detailed annual reporting and budgeting requirements which currently apply to all public service companies. These smaller LECs are not required to submit reports or data to the WUTC except for annual balance sheets and results of operations in Washington State which are separated by jurisdiction.

Existing information or reports which are separated by jurisdiction may be sufficient to meet these requirements. In response to customer complaints or on its own, after notice and hearing, the WUTC may establish additional reporting requirements for a specific LEC.

Securities, Transfers of Property, and Affiliated Interests: Any LEC which serves less than 2 percent of the access lines in the state (including access lines served by any affiliate of the LEC) is exempt from authorization and reporting requirements relating to issuance of securities, transfers of property and affiliated interests. In the case of securities, the state of Washington shall not be obligated to pay or guarantee stock, stock certificates, bonds, or other evidence of ownership or indebtedness issued by a LEC.

Alternative Form of Regulation: A group of telecommunications companies may petition the WUTC to establish an alternative form of regulation.

Appropriation: None.

Fiscal Note: Requested on February 9, 1995.

Effective Date of Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill would reduce reporting requirements without reducing the oversight role of the Washington Utilities and Transportation Commission (WUTC) for ratemaking purposes. The bill would reduce the burden of administrative compliance, and is in the best interest of customers, taxpayers, the WUTC, and local exchange companies. Much of the reporting is not useful and the time spent compiling reports could be put to better use serving customers.

Testimony Against: None.

Testified: (Pro) Terry Vann, Washington Independent Telephone Association; Arne Haynes, Mashell Telecom; Mark Kochlein, Ellensburg Telephone Company; Tara Foreid, Yelm Telephone Company; and Tim Sweeney, Washington Utilities and Transportation Commission. (No position) Bill Garvin, MCI.



WITA

WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION

February 9, 1995

The Honorable Dean Sutherland
Washington State Senate
JAC 422
Olympia, WA 98504

Dear Senator Sutherland:

You asked us to provide you with a summary of what reports are required to be filed by small telephone companies and why we are seeking legislative relief from those reporting requirements. This letter will outline our response to that request.—

The first exemption we are seeking is from the budget filing per RCW 80.04.300-330. The commission rule adopted under these statutes requires that each small company take budget information, translate it into the format required by the commission and then file it with the commission. After it is filed, the company usually receives a follow up contact for explanation of some items. This is sometimes followed by an on site visit by staff. Then nothing happens. The budgets are not used for any purpose and are generally ignored in any rate proceeding. They are not approved by the commission. It appears the cost of preparing, submitting and responding to staff questions is an exercise that wastes everyones time and money.

The second exemption is from the Securities rules adopted under chapter RCW 80.08. These have been recently amended by Legislation to require informational filings. However nothing is done with the information after it is submitted.

The third exemption is from the Transfer of Property rules adopted under RCW 80.12. This requires a lengthy application to be submitted which includes a statement detailing the facts and circumstances concerning the transaction, a copy of the instruments of transfer, a financial statement of the company as of the latest possible date, a profit and loss statement for the prior year, a detailed statement of all accounts payable, notes and other liabilities, and a summary of the outstanding securities (See WAC 480-143-010 and 020). Again after all the material is submitted and the commission acts on the application, the commission concludes that its approval of the transfer has no precedent for its review of a company's rates.

The fourth exemption is from the Affiliated Interest transactions contained in RCW 80.16. The rules related to affiliated interest require even more detailed information than is involved for a transfer of property. Perhaps the easiest way to demonstrate the level of data required for even the most inconsequential affiliated transaction is to attach a copy of the rule itself (please see the attached). The practice has been that an application for approval of an affiliated transaction is filed with the commission and then sits for months and often years. Even when approval is finally granted, the commission reserves the right to re-analyze the transaction for rate making purposes.

The Honorable Dean Sutherland
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The next exemption is from the rules contained in the commissions general rulemaking authority under RCW 80.04.080. These include an annual access reporting rule under WAC 480-80-047 and a detailed annual report under WAC 480-120-031 and semi-annual results of operations reports. These also include the monthly trouble reports under WAC 480-120-535. We will still have that information and the other service quality performance results available on request. We would also be exempted from staff data requests for information outside of a rate hearing. These requests range on a wide variety of topics, absorb a great deal of time and effort and are usually on very short turn around times.

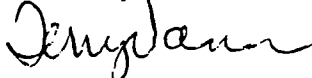
Under the legislation that we seek, we have expressly preserved the commissions rate making authority. Therefore this bill will reduce reporting requirements, but will not change the commissions ability to examine securities, transfer of property or affiliated interest transactions for rate making purposes.

This legislation will reduce reporting costs for the small companies which helps prevent future rate increases. Time spent by those employees of the small companies dealing with the regulatory process will be re-focused on satisfying customer concerns. This legislation does allow the regulated small companies the exemptions given to the competitive companies. However, the small companies will continue to file the following data:

- Annual Results of Operations
- Data requests for adjudicative proceeding
- Reporting requirements in response to Commission hearing and notice

Thank you for your attention to this matter. Should there be any questions or if there are additional concerns, please let us know. We strongly urge your support for this legislation.

Sincerely,



Terry Vann
Executive Vice President

Attachment

**TRANSCRIPT OF
LEGISLATIVE
HEARINGS**

SHB 1744
REGULATING SMALL TELECOM COMPANIES

David Danner, Bill Analysis

Thank you Mr. Chairman. Members of the Committee; this is House Bill 1744, which is behind Tab C in your book. There currently are 17 local exchange companies in the State of Washington which each serve less than 2% of the switched access lines in the state. Currently, all LECs (local exchanges companies), regardless of size, have to meet very onerous reporting requirements for documents, and these documents concern annual reports, issuance of securities, transfers of property and dealings with affiliated interests, which are persons or companies that have 5% or more equity in one of the local exchange companies.

With regard to annual reports, currently the UTC may require information in these annual reports in addition to what they must file regarding their budgets and their operations, and the UTC can adopt budget rules. For other matters, securities transfers and affiliated interests, the UTC must approve any actions by the local exchange company prior to the local exchange company's acting in issuing securities, in transferring any kinds of properties which affect the performance of their duties, or in the dealings with the affiliated interests.

This bill relieves the smaller, local exchange companies from many of these reporting requirements so that instead of automatically filing these piles of paper to the UTC, the UTC can, when it needs specific information, request that information. For example, when they receive complaints about operations, the UTC can go to the smaller local exchange companies and request that information. My understanding is that the information they currently are required to submit generally goes onto a shelf somewhere and is not looked, and when additional information for, even redundant information, is asked for, the companies have to resubmit it.

Representative Tom Huff
Prime Sponsor

Mr. Huff: Mr. Chairman, Committee members, good to be over here and thanks for hearing this bill, especially a regulatory reform bill and a consumer bill, and so that's a win-win situation.

[Chairman: Careful, it'll get assigned to a different committee (laughter)]

Mr. Huff: This had great bipartisan backing. All the Committee members voted for the bill, 11 to nothing, and all the House members, 98 to nothing, so that was truly a bipartisan bill. And as has been explained, this bill has not been considered before, number one, and we are reducing FTEs, however there are FTEs and small exchange companies reducing their costs, which ultimately will result in reduced costs to the consumer. And so my testimony this morning -- this afternoon, rather -- is going to be very short. I would urge you to vote for the bill and

Mr. Vann and his experts behind me will continue from there. I'll save you a lot of time, I'll go back to work over on the other side. Thank you. Any questions at this point?

Chairman: Questions from committee members? [none] Thank you very much.

continuing testimony

Chairman: Substitute House Bill 1744, which we already heard. Mr. Danner gave a presentation on it and the prime sponsor of the bill was here. In a historic move today, we'd like to call the UTC and all the regulated companies up together as a panel to testify in favor of the bill. Mr. Vann, Mr. McClellan and whoever else would like to join you. There is no one signed up in opposition to the bill. If you'd like to have others come with you, individuals from 2-3 other phone companies did sign up -- you don't need to come up but if you'd like to, you're welcome to.

Steve McClellan: Thank you Mr. Chairman, members of the Committee. Steve McClellan with the Utilities & Transportation Committee and we are here in support of SHB 1744.

As was described to you, this is a bill designed to streamline the paperwork that we require of the state's smaller telephone companies. And the bill really has its genesis in a series of conversations I had with Mr. Vann and others of our Staff beginning last summer. He raised with us a number of concerns about paperwork requirements that we were imposing on the smaller telecommunications companies ranging from annual reporting forms to some of the requirements we have with securities and other types of regulatory requirements.

We began to look at whether the cost benefit of those was really in proportion and concluded that it was not; that the information we were requiring on a regular basis of the companies was not helpful enough in terms of regulation or would be material that, if we got into a rate case with the companies, we could actually create at that time on an unmanned basis. In addition, concerns were raised about just the numbers of data requests and other types of information being required of the small companies and raising their costs.

At a separate track we were also discussing with some WITA companies the possibilities of using an alternative form of regulation for the small companies. One of the barriers to that was at their size, the costs in getting the accounting and other economic data needed to perform an A-4 was too high, and so they were not going to be able to use the A-4 statute as the legislature had passed it. We looked at trying an administrative remedy to those concerns, but realized that a number of the requirements are statutory in nature. We were enforcing the statutes as they had been passed and didn't have flexibility to waive them under the code, and so began to work with WITA on the legislation that you see before you. And I want to thank Mr. Vann and the Association for their help in putting together this piece of legislation and bringing it forward, because we believe it is a reasonable way to begin to streamline regulation for small telecommunications companies. We think it is a pro consumer bill. Our main concern in working with the Association was to protect monopoly rate players [sic] and we believe that we can do it with the reduced reporting in this bill and are pleased to endorse it.

Chairman: Thank you. It's got to be a first to have the UTC testifying in favor of a utility request bill to have less information going to the UTC. It's just proof that if you stay here long enough you're going to see almost everything. Mr. McClellan, I just wanted to ask one question, and I think you answered it indirectly but I wanted to make sure that I ask it specifically, and that is, do you see anything in this piece of legislation that will compromise the rate-payers' ability to have constructive review of the companies that are monopolized service to them?

Mr. McClellan: No. It leaves full control over the rates and the consumer laws.

Chairman: OK. Thank you. Mr. Vann?

Mr. Vann: Senator, members of the Committee, my name is Terry Vann, I'm the Executive Vice President of the Western Independent Telephone Association, and we support Substitute House Bill 1744, which streamlines regulation for small telephone companies. There are 17 small companies who are fully regulated and would qualify for the exemptions contained in this bill. There are 22 local telephone companies in Washington State who are fully regulated by the Commission. Four of those companies -- US West, GTE, PTI and Sprint United -- would not be covered under the exemptions in this bill and would continue to make the filings and reports as they currently do. In addition to the 22 local exchange companies, there are 221 registered companies who are not fully regulated. Most of those are long-distance carriers; five of them are competitive local exchange providers. Those companies are exempted from several statutory requirements, and the 17 small companies are here to say "me too."

Here with me today in support of this legislation are Skip Haynes from Mashell Telephone Company; Tara Foreid from Yelm Telephone Company, and George Kochlein from Ellensburg Telephone Company. There are two issues that are addressed in the bill. One reduces the reporting requirement for small telephone companies and the other enables the Commission to do an alternative form of regulation for a group of companies rather than having to establish a separate A-4 for each company.

[end side A of tape -- continues on side B]

. . . to the transfer of property that we don't utilize any of the information until the rate proceeding would occur. And the we would resubmit it and then do it. The fourth exemption is from the affiliated interest transactions contained in RCW 80.16. The rules related to the affiliated interests require even more detail and information than is involved in the transfer of property. The practice has been that an application for approval of an affiliated transaction is filed with the Commission and then sits for months and it can often times be years. Even when approval is finally granted the Commission reserves the right to re-analyze the transaction for rate-making purposes. The fifth exemption that we're seeking from this legislation is from the rules contained in the Commission's general rule-making authority under RCW 80.04.080. These include an annual access reporting rule, a detailed annual report, and a semi-annual results of operation report. These also include a monthly travel report that we submit to the Commission. We will still have the information available and we will have our service quality performance results available if the Commission wants to see those in regards to a specific instance or complaint. This exemption also exempts us from Staff data requests for information

outside of a rate hearing. These requests range on a wide variety of topics, absorb a great deal of time and effort and are usually on a very short turn-around basis.

So under the legislation that we're seeking today, we expressly reserve the Commission's rate-making authority and the authority of the consumer protection laws. Therefore the bill will reduce reporting requirements but not change the Commission's ability to examine securities, transfer property or affiliated interest transactions related to rate-making purposes. We will continue to file an annual Results Of Operation Report and respond to data requests at an adjudicated proceeding, and for reporting requirements in response to Commission hearing and notice, if there is a specific instance they would like something, further information on. As I said, the bill will apply to 17 small telephone companies in the State of Washington. They range in size from 4 companies who serve less than 1,000 customers to Ellensburg, who would be the largest of these companies exempted, who serves over 18,000 customers. Most of the companies under this bill serve around 2,000 customers. These are small businesses who are concerned with the costs of regulation. In addition, we have met and worked with the Commission, the other exchange carriers, the other large local telephone companies, tracer business users and other parties. We feel we have considered and addressed their issues and concerns as best as we could in proposing the bill, and we have received broad support in the House and it was mentioned that it did pass with the voters, 98 to 0.

So thanks for listening to our concerns. We urge you to support House Bill 1744 and we are ready to proceed with comments from the other panel members unless you have any questions at this point.

Chairman: Mr. Vann, do you have any idea what collectively amongst those 17 companies these actions might financially save on an annual basis?

Mr. Vann: I think the panel members will have an answer to that when they talk about what it will mean to their specific companies in terms of time savings.

Chairman: Will we be able to multiply one of their statements by 17 and come up with . . .

Mr. Vann: Well, what you'll get is that the large companies will save more time and the smaller companies -- you can probably do groupings. There will be about six of them will save one amount, about four of them will save another amount . . .

Chairman: Would that be financial savings to the UPC as well?

Mr. Vann: It should.

Chairman: Depending on the level of review they

Speaker (not sure who): Well, we'll have some. It will have more in the second year. The real savings would come if we're able to agree on an A-4 and begin having more automatic rate making. As Mr. Vann said, the issue is that this was a lot of cost on the company for filings which the Commission actually didn't use, except in the context of a rate case, and so there will

be minimal paperwork savings for the Commission but I think more substantial for the companies involved.

Chairman: Do you recall, and pardon me if I missed it, but when the last rate case for one of the other members other than GTE was ?

Mr. Vann(?): It's been a couple of years since we've had any but it's been any of a number of years before. We had a number of EAS cases where companies added EAS routes and added those increments, but in terms of general rate cases, I'd say over the last decade, just a handful.

Chairman: OK. Of course the point of it is that these reports then would be very frequently used. If they were only used in general rate cases and there are very seldom any general rate cases, its very --

Mr. Vann (?): infrequently used.

Chairman: They would be used.

Mr. Vann (?): correct.

Chairman: Thank you. Yes sir?

Arne Haynes: Chairman Sutherland, Senators. My name is Arne Haynes. I'm President and General Manager of Mashell Telecom. We serve the Eatonville and Kapowsin (?) area. Our company was founded in 1910 and has been operated by my family since 1912. I'm the fourth generation to manage Mashell Telecom. We serve 2,600 access lines in an area of approximately 86 square miles. We employ the latest technologies and we strive to provide a high level of service. I'm here in support of SHB 1744. This bill, if made law, will reduce the burden of administrative compliance and defer the addition of another employee for my company. Members of this panel will identify for you various benefits of this bill. I will take my remaining time to paint a picture of how this bill will help Mashell Telecom defer the expense of adding another employee.

Mashell currently has 16 employees. Four of these people, including my mother and father, are part-time employees. The responsibilities of the people is as follows: central office equipment operation - 3; outside plant operations -4; accounting and regulatory compliance -4; general administration - 2, for a total of 16. Frankly, even with the fact that three of our accounting people are part-time, we have too much capacity committed to regulatory compliance. I will now try to show how SHB 1744 can help Mashell, its customers and employees.

Here's a sketch of our 4 accounting and regulatory compliance persons. Judy. Judy is the only person who works full-time in this area. Her responsibilities include carrier access billing functions, accounts payable, separation study support, and general accounting functions.

Arne Haynes: In conclusion, SHB 1744 is worthy of passage. It will benefit our customers by holding down our costs, it benefits our employees and Mashell by allowing us to operate in a manner that we believe is in our best interest, and I thank you for allowing me to testify, for hearing this bill. I hope you will vote for it and if you have any questions I'd be happy to answer them.

Chairman: Thank you very much.

Tara Foreid: Good afternoon. My name is Tara Foreid and I'm the Customer Service Manager at Yelm Telephone Company. At Yelm we have 41 employees now, cover 172 square miles and we serve 9,000 telephone subscribers. Of those 9,000 telephone subscribers, 79% are residential and 21% are business. In the last 5 years alone, our average growth rate has been 10%. That's a phenomenal growth rate for phone companies and especially a small, rural phone company. We don't see this stopping in the near future. I'm here today to support SHB 1744 from the customer service point of view. With all the changes in the telecommunications industry during these last 10 years, our customers are frustrated and confused. Many customers need to have face-to-face contact. We provide a walk-in lobby. We have 5 customer service windows to help our customers. In addition to our walk-in lobby, on a weekly basis we answer 1,300 telephone calls. We process 1,500 service order requests each month. Those requests were for new service, moves, enhancements to existing service and complete disconnects. At Yelm telephone we pride ourselves in providing state-of-the-art telephone services and complete customer satisfaction. That's the reason I'm here today. By supporting SHB 1744 and streamlining our current reporting requirements, our Yelm Telephone Company staff would save an estimated 180 hours a year in preparing and filing these reports. I hope you agree with me that that time would be better spent serving our customers directly. Thank you very much.

Chairman: Thank you.

George Kochlein: Mr. Chairman and Committee members, my name is George Kochlein. I'm President of Ellensburg Telephone Company. Ellensburg has been serving our area in telecommunication and other communication services in central Washington since the turn of the century. We currently serve approximately 18,000 access lines; 14,000 of those are residential, the other 4,000 business. Our service area includes Ellensburg, Kittitas, Thorpe, _____, Liberty, Lauderdale and Selah.

We believe that SHB 1744 is in the best interest of our customers, the Public Utility Commission, and the local telephone companies. By passage of this bill, it will help relieve our company and other small companies of often cumbersome and unnecessary burdens of preparing and filing monthly and annual reports and responding to miscellaneous data requests. The following are some examples of staff time required to produce and file some of these regulatory reports: Annual budget filings: 60 hours/yr; Annual access charge reporting: 80 hrs/year; Annual reports form M: 60 hours/yr; monthly trouble reports: 6 hrs/month or 72 hrs/year; periodic results of operation: 10 yrs/mo or 120 hrs/yr. When you combine this reporting time, its' equivalent of about 8.3 weeks per year of one employee's time. However, this is spread among a number of employees and I personally feel this is a minimum, where you don't peg each request in each change and keep those totally totaled, to I'd say that's a minimum savings.

As you can see, a great deal of time and energy spent by our management and staff developing reports on various functions to the Commission that are really not used could be better spent providing services to our customers. Ellensburg Telephone Company provides over 4,000 access lines to businesses within our serving area. We have a few fairly large businesses, the biggest being Central Washington University, Treetop, Inc., Twin City Foods; we also have four K-12 school districts. We take pride in serving these customers for all their types of communication. However, we think our time would be better spent emphasizing customer service and dealing with these people to provide them current configurations of services, trying to make sure we have competitive rates, and prompt responses to their communications changes and requests for quotations.

Regulatory streamlining and elimination of cumbersome and time-consuming filing requirements would allow the Public Service Commission the flexibility to explore incentive regulations for small telephone companies and will allow our company and staff to react to our customers in a timely and competitive manner. I urge your support of SHB 1744. We feel it's a win/win situation. Thank you.

Chairman: Thank you -- questions? Would all of you see -- and you've mentioned 60 hours, 100 hours, 180 hours in reduction in work load. Would all of you see no reduction in costs, simply a transfer of those hours to other activities or contract people or salary people not having to work the overtime? You don't necessarily see any reduction in costs to the customers?

George Kochlein: I would feel in our case that (1) we could spend more time with customers. It would hopefully prevent us from adding more staff, where we've got a staff control situation and try to keep our costs down.

Speaker (not sure who): The cost savings will be from the paper that you have to file, if you have to hire a consultant you would not hire a consultant, and those are significant cost savings. You would not see cost savings in terms of numbers of employees, because basically what we would be doing is, those employees would be shifting their workload to serving customers.

Chairman(?): And the embarrassing question that is most often not asked, and that is, we're not going to be somehow asked a question in the future whether or not some official actually went on an additional vacation somewhere based on the savings of these or they purchased a new piece of personal equipment or they got a nice new raise, those kinds of activities, then we're pointed out and said passed a bill that resulted in a \$20,000 savings for X Telephone Company and correspondingly the Chief Executive Officer got a \$20,000 salary increase that year and then we're blamed. We're not going to be seeing those kinds of activities.

Speaker (not sure who): I think that question would come up in a rate proceeding and what we're saying is that the rate proceeding would still allow the Commission to look at those kinds of expenditures and we would be allowed or disallowed as the rate proceeding.

Chairman: I just wanted to make sure that -- sometimes it's the chair's opportunity to ask the embarrassing questions and make sure that they're put out on the table to make sure Committee members have some sort of protection. Thank you very much. [portions of personal comments omitted] No additional public input on these? With that, we'll move into executive session.

[END of relevant portions on this tape]

**STATE OF WASHINGTON
HOUSE OF REPRESENTATIVES**

HB 1744

Margaret Allen: Now we go to House Bill 1744. Currently local exchange companies, regardless of size, must file various reports with the UTC. Those include detailed annual reports and budgets and various reports concerning stock and bond issuances. Local exchange companies also must request UTC authorization for some property transfers _____ some types of contracts with affiliated interests. Also, unless UTC authorizes an alternative form of regulation or A-4, the local exchange company is subject to traditional rate-of-return based regulation. The current statutes are unclear whether the UTC can authorize an A-4 for a class of companies as well as to individual companies. This bill exempts local exchange companies serving less than 2% of the access lines in the state from detailed reporting and UTC authorization requirements. In place of detailed annual reports, these small companies need only submit an annual income statement and a balance sheet. Also, a group of telecommunications companies may petition the UTC for an A-4 and the UTC may establish A-4 for a class of telecommunications companies. Any questions?

Chair: Thank you Margaret. We have Terry Vann from WITA and he has a panel, so if they would come to the table please, welcome.

Terry Vann: Thank you. Representative Casada, members of the Committee, my name is Terry Vann, I'm the Executive Vice President of the Washington Independent Telephone Association (WITA). House Bill 1744 streamlines regulations for small telephone companies and there are two issues addressed in this bill. One reduces the reporting requirements for small companies and the other enables the Commission to an alternative form of regulation for a group of companies rather than having to do a separate one for each individual company. To address this legislation this morning we have Skip Haynes from Mashell Telephone Company; Tara Foreid from Yelm Telephone Company, and Mark Kochlein from Ellensburg Telephone Company.

House Bill 1744 will relieve the small companies from many unnecessary reporting requirements while preserving the Commission's ability to exercise adequate oversight over the activities of the small companies. The first exemption we are seeking is from the budget filing for RCW

80.04.300 – 330. The Commission rule adopted under these statutes requires that each small company take budget information, translate it into the format required by the Commission, and then file it with the Commission. After it is filed, the company usually receives a follow-up contact for explanation of some item. This is sometimes followed by an on-site visit by Staff, and nothing happens. The budgets are not used for any purpose and are generally ignored in any rate proceeding. They are not approved by the Commission and it appears to us that the costs of preparing, submitting and responding to the Staff questions is an exercise that wastes our time and money and the Commission's time and money. The second exemption is from the securities rules adopted under Chapter RCW 80.08. These have been recently admitted by legislation that require only informational filings. However, nothing is done with the information after it is being submitted. The third exemption is from the transfer of property rules adopted under 80.12. This requires a lengthy application to be submitted, which includes a statement detailing the facts and the circumstances concerning the transaction, a copy of the instruments of transfer, a financial statement of the company as of the latest possible date, a profit and loss statement for the prior year, a detailed statement of all accounts payable, notes and other liabilities, and a summary of the outstanding securities. Again, after all the material is submitted, the Commission acts on the application and the Commission concludes that its approval of transfer has no precedence for its review of the company's rate. The fourth exemption is from the affiliated interest transactions. Those rules also contain a detailed information list more lengthy than the one I read for transfer of property. Perhaps the easiest way to demonstrate the level of the data required is to show you the actual rule, but the problem is that the practice has been that those applications have been filed, they often sit for months, we have some cases where they have sat for over a year, and even when the approval is finally granted, it too, like the transfer of property, is only approved and has no precedence for review of the company's rates. What the Commission does in both of those cases is reserve the right to reanalyze the transaction for rate-making purposes. So what we have is a situation where we submit it, it's reviewed, and then it's held in abeyance until such time as when we would file a price increase and then it would be reviewed again. The next exemption from the rules is for the rule-making authority under RCW 80.04.080. Those include access reporting information, detailed annual reports, semi-annual results of operations and they also include monthly trouble reports, and what we're proposing is that we file an annual results of operation that we file for data if it is requested in an adjudicative proceeding, and if there is a complaint or there is a problem, that reports then be filed after the Commission asks for that information in the notice and hearing. So those are the specifics of the legislation that we're proposing, and under the legislation we have expressly preserved the Commission's ratemaking authority. Therefore, what we're trying to do in this bill is reduce the reporting requirements, but not change the Commission's ability to examine securities transfer of property or affiliated interest transactions for ratemaking purposes, and we have some amendments that will clarify that, that we're only trying to get out of the reporting requirements. The enabling part of this legislation is for pricing flexibility, or sometimes called alternative forms of regulation. Those are contained in 80.36135 and the legislation does two things. It, in Section 3 allows the companies to petition as a group to establish an alternative form of regulation or in Section 5 it allows the Commission to establish by rule an alternative form of regulation. And then the individual companies have 160 days then to opt in, or once they notify the Commission that they will opt in under that rule, there is 180 day period that we give the Commission time to review things for that. So those are the specific things contained in the

legislation and we'd like to have our group of companies talk a little bit about why they feel this is important for them.

Chair: Terry, before we go on, would you tell the new members on the committee what WITA is and how many companies in comparison?

Terry: WITA is the Washington Independent Telephone Association. There are 20 members who are local exchange companies, it is all of the local exchange companies in the State of Washington except for US West. 17 of those members are small companies, what we refer to traditionally as small, and this legislation, that's 2% of the access lines of the state or less. I think the largest of those companies is Ellensburg, and they have 18,000 customers, and it goes down to very small companies who have between 2-400 customers from there. The three mid-size companies who belong to our association are GTE, PTI and Sprint United. We'll start with Skip Haynes from Mashell Telecom.

Arne Haynes: Thank you, Representative Casada, members of the committee, good morning. My name is Arne Haynes, also known as Skip Haynes. I'm President and General Manager of Mashell Telecom, Inc., serving the Eatonville and Kapowsin areas of Western Washington. Our company was founded in 1910 and has been operated by my family since 1912. I'm fourth generation to manage Mashell Telecom. We serve approximately 2400 customers in an area of approximately 86 square miles. We employ the latest technologies and we strive to provide the best service possible, a very high level of service. I'm here in support of House Bill 1744. This bill, if made law, will reduce the burden of administrative compliance and defer the addition of another employee in our company. Members of this panel will identify for you various benefits of the bill. I'll take my remaining time to paint a picture of how this bill will help Mashell Telecom defer the expense of a new employee. Mashell currently has 16 people employed. Four of these people, including my mother and father, are part-time employees. The responsibilities of these people are as follows: Customer service, the daily customer contact (3); central office equipment operations (3 people), outside plant operations (4); accounting and regulatory compliance (4 people); general administration (2), for a total of 16. Frankly, even with the fact that three of our accounting people are part-time, we have too much capacity committed to regulatory compliance. I'll try now to show how 1744 can help Mashell, it's customers and employees. Here's a sketch of our floor accounting and regulatory compliance people. Judy is the only full-time person. Her responsibilities include carrier access billing, accounts payable, separation study support and general accounting functions. Mom. My mother spends one day a week paying the bills. Mike, our accountant, is responsible for general ledger accounting, financial statement development, preparation of the budget, all state tax returns and development for support of the federal tax return. Mike works afternoons on a regular basis and nights and weekends every December through April. He is also the accountant for another small business in town. He works there in the mornings. Mike is giving Mashell all he can and then some. Mike has estimated that this bill will reduce his annual workload by about 70 hours and this is during his busy time. This bill, if law, will give Mike some breathing room and push forward the time where Mike would have to become a full-time employee. Linda. Linda's our revenue requirements manager. Her responsibilities are completing complex studies that develop the interstate long distance costs, intrastate, local and other costs. She's also responsible for regulatory compliance with the Federal Communications Commission and the Washington

Utilities and Transportation Commission. Linda joined Mashell as a part-time employee. She was a senior manager with an international accounting firm. Linda now works for Mashell and another small telephone company. She works one day per week in each office and telecommutes to complete her week. A recent FCC data request now has her working weekends as well. Linda has estimated that this bill will reduce her annual workload by 30-40 hours at her busy time. This bill will help Linda keep her work time commitment where she has determined it should be. Without some reduction in her obligations, she will have to choose between Mashell and the other company. This adds to both Mashell's costs and the other company's total costs of operation because both would be required to hire a full-time, highly skilled employee. Mike and Linda are experienced and valuable employees. Part-time work fits their needs and Mashell's. They have a work schedule of their choosing, and we benefit from a payroll saving. Further, we do pay benefits for both employees. Our arrangement is considered fair from an employee point of view as well as from Mashell's point of view. In conclusion, House Bill 1744 is worthy of passage. It will benefit our customers by holding down our cost. It benefits our employees and Mashell by allowing us to operate in a manner that we feel is in our best interest. Thank-you for hearing my testimony for considering this bill. I hope you will vote for passage and if you have any questions I'll be happy to answer them. Thank-you.

Mark Kochlein: Good morning, Madam Chair and members of the committee. My name is Mark Kochlein. I am Vice President of Customer Services at Ellensburg Telephone Company, 4th generation family member within this business at Ellensburg Telephone Company. Ellensburg Telephone has been providing telecommunications, specifically local dial tone and other telecommunications in Central Washington since the turn of the century. We currently have approximately 18,000 access lines in Central Washington. Our service area includes Ellensburg, Kittitas, Thorpe, Lauderdale, Vantage, and Selah. Ellensburg Telephone Company believes House Bill 1744 is in the best interests of the customers we serve, the taxpayers, the Public Utilities Commission, and the local telephone companies. House Bill 1744 will help relieve Ellensburg Telephone and other small telephone companies from the often cumbersome and seemingly unnecessary burden of preparing and filing monthly and annual reports and responding to miscellaneous data information requests. The following are examples of the time required of our staff and management to produce and file some of the regulatory reports addressed in this bill. The annual house budget filing (60 hours per year); annual access charge reporting, (80 hours per year); annual report on Form M (60 hours per year); monthly trouble reports (6 hours per month, or 72 hours per year); periodic results of operations (10 hours per month or 120 hours per year). Combine these reporting requirements, take the equivalent of 8.3 weeks per work per year of one employee's time and that's, we've taken time of everyone involved in looking over these reports and sending them in. So it isn't just one employee. This does not include the unknown number of hours spent each year on responding to miscellaneous data requests. As you can see, a great deal of time and energy is spent by our management and staff developing these reports on various functions of our business. When looking at the entire process involved in these filings, it appears to us that much of the reporting is not used for any valuable purpose any longer and therefore unnecessary. We Feel too much time is spent creating thee reports. The time could be better spent on activities which are aimed at providing excellent service to our customers, which is one of our primary goals contained under our mission statement at Ellensburg Telephone. Ellensburg Telephone Company provides over 4,000 access lines to business within our serving area. We have several large competitive businesses such as

Central Washington University, Tree Top, Twin City Foods, and serve four K-12 school districts. We take pride in the communications service that we have provided them in the past. In today's world, each of these entities demand competitive rates, flexible and unique service configurations, and often want a fast response to their request for quotes or information. CWU, or Central Washington University, is continually looking for competitive and creative arrangements for their entire campus communications system. Tree Top needs an innovative ideas and reasonable costs to have a disaster recovery plan in place this year. House Bill 1744 will help us to meet such needs as this on a timely basis. Regulatory streamlining will allow the Commission the flexibility to explore incentive regulation for small telephone companies in an efficient manner, which in turn will allow us to react to our customers' needs competitively and in a timely manner without the cumbersome and slow filing requirements now in place. I urge you to support House Bill 1744. The telecommunications industry has evolved to a point where traditional regulation may no longer be the most effective and efficient form of regulation. Your support to streamline the regulatory process for small telephone companies is a positive step in the evolution of the telecommunications industry. Thank-you.

Tara Foreid: Good morning. My name is Tara Foreid, and I'm the Customer Service Manager at Yelm Telephone Company. We are a small independent telephone company. We are located just east of Olympia. I'm sure most of you know where we are. We serve 172 square miles. That encompasses the City of Yelm, City of Rainier, parts of Roy and all of McKenna. We have almost 9,000 access lines; 2,000 of those are business customers. I'm here today to provide testimony in support of House Bill 1744 from a customer service perspective. As a Customer Service Manager, we pride ourselves in providing excellent customer service and we want to respond to our customer's needs, and whether those needs are for basic residential service or for the latest telephony technologies such as caller i.d., we need to be able to use our resources to provide those services. By streamlining regulation for small telephone companies, this will allow our finite resources to be better directed, focusing their energies on taking care of our customers. The reports that we are currently required to provide have no direct bearing on Yelm Telephone customers. After all the time and effort involved in submitting these reports, the Commission neither approves or disapproves, and reserves the right to review later for ratemaking purposes. I feel that this time and effort would be better spent responding directly to our Yelm Telephone customers. House Bill 1744 will make an immediate and positive impact to Yelm Telephone and to our customers. Thank-you.

Chair: Thank you. Any members have questions? [Portions omitted.] Representative Mitchell?

Ms. Mitchell: I don't know how pertinent it is for you to answer this, but I get the feeling that what we're hearing about today is just the tip of the iceberg?

?: That's correct.

Ms. Mitchell: Your agreeance (?) has answered my question, thank-you.

Chair: Representative Huff.

Mr. Huff: Are these amendments proposed by you folks?

Terry Van [?]: Yes. And I did want to come back to those. We have worked with both the Commission and our business user groups to talk about this bill and they have come to us with some clarifying language that they feel would clarify some of the issues that we've talked about. So we would propose that these amendments be adopted. The first clarification is that the Commission does retain authority over the rates and services accounts, even though we're being exempted from the reporting, so we felt this was a good clarifying issue that the Commission brought to us. The second one is that the annual report that we file, the Commission would like it to be jurisdictionally separated so that they can see a results of operation for the State of Washington and we have no problem with that, so we would propose that amendment as well. The last three amendments that are on that sheet were discussed with Tracer, the business organization, and they wanted to clarify that Section 1 still applied, even though we were exempting in these new sections from specific things that Section 1 is still the overriding legislation and we have no problem with that.

[?]: Thank you, one more question. As I understand it, the Ellensburg Telephone Company would be the largest organization within this group that would apply. PTI for instance, would not apply to this, right?

Terry Van: There are 17 companies that this would apply to, Ellensburg being the largest, and GTE, PTI and United, the other three members that I mentioned earlier would **not** apply to this bill.

Chair: Representative Hankins.

Ms. Hankins: Thank-you Madam Chair. Are there other small companies out there that aren't members of WITA?

Terry Van: There are other small telecommunications companies, but they are, we started out as the local regulated telephone companies and now there are other local small telephone companies, but they don't have the same regulations that we have.

Ms. Hankins: And how many are there, do you know?

Terry Van: 231.

Ms. Hankins: 231. Interesting.

Terry Van: There are total, there are only 8 of those who are local, but there are 231 telecommunication companies.

Ms. Hankins: And 8 of them are local ones.

Terry Van: Yeah.

Ms. Hankins: Can I have one follow-up question?

Chair: Sure.

Ms. Hankins: In your statements about the numbers of people that you serve, are these mostly businesses or are they businesses and customers, residential, in all of your companies? Do you have a breakout of –

Tara Foreid: We serve 9,000 customers, 2,000 are business customers.

Ms. Hankins: Ok. I was just curious as to the difference in those.

[?]: We serve approximately 18,000 access lines, which isn't customers, but access lines, and approximately 4,000 of those are businesses.

[?]: We also serve business and residential customers and I gave an approximate customer count of 2400, we have 2600 access lines and just under 20% of those would be business.

Ms. Hankins. Thank-you.

Terry Van: Let me just correct one thing, the numbers of local companies in addition to the ones we have, there are **5, not 8.**

Ms. Hankins: 5 not 8, thank-you.

Chair: Any more questions from members? Thank you very much. Next we have Tim Sweeney from the WUTC.

Tim Sweeney: Good morning, my name is Tim Sweeney, I'm with the Washington Utilities and Transportation Commission. Thank-you for having us up here, I'd like to introduce two people who've worked hard on this bill, Steve Smith, our Assistant Attorney General assigned to the Commission, and Kath (?) Thomas, our Assistant Director of Telecommunications. I am also speaking for the Commission today, I apologize for them not being able to come. I want to say that they support this legislation, particularly with the amendments that clarify it. Representative Mitchell indicated that this may be the tip of the iceberg. I think the way to look at this is a two-phase streamlining, that the first stage is the statutory cleaning up and then the second phase is a pursuit of an alternative form of regulation that would take the next step. It's very clear the traditional regulation in the telecommunications industry if you've heard me talk before, is changing, we have to change to adapt to the underlying market conditions and we really appreciate the work that WITA has done to help clear out some of the clutter here and also to make it possible for a certain amount of economy of scale to be established for coming forward and doing an alternative form of regulation. The 1989 Act is a wonderful, but underutilized statute. We have only had two petitions filed with the Commission over its history, and one of those is pending, you've heard us discuss in the past the efforts we've had with US West to grant them additional pricing flexibility under the statute. It's an enormous undertaking and so if there's any way we can to reduce the costs associated with the smaller companies coming forward, I think that's a good idea, one size does not fit all; as you've heard up here, there's quite a variation between the types of companies and the markets they serve. And one of the reasons we feel comfortable about eliminating some of these reporting requirements is that these companies particularly are very close to their communities and have a very close relationship with their consumers, more so than you'll find with the larger corporations, companies. I think

I've covered everything, I wrote my notes down and I guess I just adlibbed, but I guess if you have any questions, I'd be happy to address them.

Chair: Margaret will be glad to work these amendments and so forth as we need to make sure that we work together on them with Terry and yourself and Margaret. Any questions? Ok. Thank you very much. Well, that's all we have on our agenda, I believe. Bill Garvin is here from MCI, but if you have any questions with him.

Bill Garvin: Thank-you Madame Chairman, Bill Garvin from MCI. I really didn't have prepared testimony today but I would request with the Chair's indulgence and the committee's indulgence if we have an opportunity, we're going to review this out of our Denver office. Right now it doesn't appear that we do have any questions, but I also want to advise the committee that Terry Van, Ray Chandler and Dan Coin [?] have been very forthcoming on this legislation and have consistently asked our input. We have been delinquent in not getting it back to them so it's not their fault by any means. We also have confidence that the UTC has done an in-depth analysis, so we don't think we have problems but we would like your indulgence if we want to come back prior to exec with comments, so I guess I'm asking for forgiveness rather than permission.

[laughter]

[?]: Not forgiven.

Chair: Thank you very much. Well that's all we had on our agenda today, so we'll adjourn.

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ORIGINAL STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

9	In the Matter of,)	No. UT-031459/UT-031626
10	COMCAST PHONE OF WASHINGTON, LLC)	CERTIFICATE OF SERVICE
11)	
12)	
13)	

I certify that on the date given below, the original and 13 copies of the **Reply Brief of Comcast Phone of Washington, LLC, Declaration of Rhonda Weaver In Support of Reply Brief of Comcast Phone of Washington, LLC and the Certificate of Service** in the above-referenced docket were delivered via of legal messenger:

Ms. Carole Washburn, Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 South Evergreen Park Dr. S.W.
Olympia, WA 98504-7250
E-mail: records@wutc.wa.gov

On the same date, a true and correct copy of each of the above-mentioned documents was sent by regular U.S. Mail and e-mail to:

1 *On Behalf of Time Warner Telecom of WA:*

2 Gregory J. Kopta
3 Attorney at Law
4 Davis Wright Tremaine
5 2600 Century Square
6 1501 Fourth Avenue
7 Seattle, WA 98101-1688

On Behalf of AT&T

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6 *On Behalf of MCI:*

7 Michel Singer-Nelson
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23 DATED this 23rd day of December 2003.

25 By 
26 Nancy E. Dickerson
Legal Secretary

CERTIFICATE OF SERVICE -- 2

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