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March 23, 2006

Gary Evenson, Administrator  
Telecommunications Division  
Public Service Commission of Wisconsin  
610 N. Whitney Way  
P.O. Box 7854  
Madison, WI 53707-7854

**RE: Annual Review of the Earnings of Small Telecommunications  
Utilities, Docket 5-GF-147**

Dear Mr. Evenson:

Pursuant to the March 13, 2006 request for comments in the above-referenced docket, enclosed for filing are the Comments of the Wisconsin State Telecommunications Association.

If you have any questions or problems with this filing, please contact me at (608) 256-8866 ext. 23 or by email at [brybarik@wsta.info](mailto:brybarik@wsta.info).

Sincerely,

/s/ Brian J. Rybarik  
Brian J. Rybarik (SBN 1047401)  
Legal Counsel and  
Manager of Regulatory Affairs

Attachment



This year's calculation represents some major successes in the method used to calculate the statewide average R-1 rate. This is particularly true of calculations for incumbent local exchange carriers (ILECs) that are offering their basic local service as part of a package of services. The price for all of the packaged services cannot be included in the calculation of the basic rate; however, the package rate must include some portion for the basic service that is inherent in the packaged offering. Wis. Stat. § 196.215(7)(b)1. (outlining which services are to be included in the R-1 rate). Accounting for the basic service portion of the packaged service was the major issue identified in last year's R-1 rate determination. *See e.g., Annual Review of the Earnings of Small Telecommunications Utilities*, Public Service Commission of Wisconsin, Docket 05-GF-147, Comments of the Wisconsin State Telecommunications Association at 3 (March 25, 2005).

The success of this year's calculation – defining a method for determining the basic rate associated with ILEC packaged services – is encouraging.

However, there are certain portions of this year's R-1 rate calculation that provide reason for caution. The WSTA is particularly concerned with portions of the CLEC calculation method used to impute basic service rates to CLEC access lines. WSTA's concerns with this portion of the calculation are outlined below along with suggestions of how to remedy these concerns for this year, and in the future.

**I. A DECLINING RATE DOES NOT CORRESPOND WITH THE GENERAL COST FOR BASIC SERVICE IN THE STATE**

The R-1 rate set forth in the Request for Comments is alarming because, in general, the price for basic telecommunications service has been increasing over time.<sup>1</sup> Reflective of the cost increases, 12 companies raised basic rates during the last year and only 1 company lowered their basic rate. As a result, the expectation should be that the 2005 statewide average would end up marginally higher than the year before.

Despite this general trend, the proposed rate for 2006 is \$14.81 while the rate used for 2005 was \$14.96. This \$.15 decrease, while minimal, is difficult to understand for an industry that is continuing to face increasing costs. The Commission recognized the trend of increasing costs in the telecommunications industry in last year's R-1 rate determination. Just 12 months ago, the R-1 rate went from \$14.51 to \$14.96, an increase that was (and continues to be) indicative of the general trends recognized by the industry.

Aside from the Commission's recent explicit recognition of the general trend of increasing costs for basic telephone service, a similar conclusion was implicitly recognized in the Commission's AT&T (formerly SBC) deregulation case. In that case,

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<sup>1</sup> This same concern was present after last year's Draft Order was released. See, *Annual Review of the Earnings of Small Telecommunications Utilities*, Public Service Commission of Wisconsin, Docket 05-GF-147, Comments of the Wisconsin State Telecommunications Association at 1 (March 25, 2005) ("When...decreases occur in the average state-wide rate, one would expect to find a corresponding trend of lower rates...[however] most companies actually had modest rate increases"). By changing the ultimate calculation of last year's rate from \$13.88 in the Draft Supplemental Order to \$14.96 in the final Supplemental Order, the Commission implicitly agreed that, in general, the average price for basic phone service was not decreasing.

the Commission determined that AT&T's rates for basic local exchange service were artificially held below the competitive market price. *Petition of SBC Wisconsin for Suspension of Wisconsin Statute sec. 196.196(1) with Regard to Basic Local Exchange Service*, Public Service Commission of Wisconsin Docket 6720-TI-196, Final Decision at 6 (November 25, 2005). Since the basic service rate was established for AT&T, the competitive price for the service had risen dramatically. *See id.* at 7 (installing conditions to limit rate increases to \$2.50 per year for two years to avoid "rate shock" as the basic price is increased to the competitive rate).

Because of the method of regulating AT&T, the issues decided in the deregulation case do not necessarily provide a direct comparison to the rate at which costs are increasing on a statewide basis. However, because the rates set for AT&T were so far below market rates, the conclusions reached in the AT&T deregulation case suggest that the costs for basic service are generally increasing. *Id.* at 29. This fact also suggests that the statewide R-1 rate has been distorted in recent years, since a major factor in the calculation, AT&T's basic rates, are well below the competitive market price.

This year's calculation cannot remedy the problems identified above since the calculation will not capture the rate increases allowed by the deregulation order, which will move AT&T's basic rates toward the market price. Based on the treatment of AT&T's rates in this year's calculation and the fact that rate increases are being

implemented in 2006, next year's statewide average R-1 rate calculation should result in a dramatic increase in the R-1 rate.<sup>2</sup>

## **II. POSITIVE OUTCOMES OF THIS YEAR'S CALCULATION**

As noted above, with respect to ILEC packaged prices, the Commission's process to determine this year's rate was encouraging for the WSTA and its members. This outcome is due, in large part, to the cooperation between Commission staff and the WSTA and its members to develop ways to calculate basic rates with the packaged services that many customers are taking. This cooperation was encouraged by the WSTA in earlier Comments on this issue as well as by the Commission's Supplemental Order in last year's R-1 rate calculation. *Annual Review of the Earnings of Small Telecommunications Utilities*, Public Service Commission of Wisconsin, Docket 05-GF-147, Comments of the Wisconsin State Telecommunications Association at 10-11 (March 25, 2005); *see also*, *Annual Review of the Earnings of Small Telecommunications Utilities*, Public Service Commission of Wisconsin, Docket 05-GF-147, Supplemental Order at 2 n.1 (April 4, 2005).

To fulfill the goal of establishing an effective, predictable and accurate method for calculating the R-1 rate, representatives from the WSTA, AT&T, Verizon and small telephone companies met to determine a method to best calculate a basic rate for customers who are taking packaged services from ILECs. For many companies, this is a simple calculation because the packaged rate includes a tariffed basic service rate. The

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<sup>2</sup> Given the number of access lines served by AT&T (905,936 for this year's calculation), increases to their rates will have a direct and significant effect on the overall statewide average rate.

WSTA was able to verify most of the tariffed rates of member companies used in the calculation prior to the release of the Request for Comments.<sup>3</sup>

Determining a basic service rate for price regulated companies requires a more complex calculation. Early in this process, representatives from the major price regulated companies discussed and proposed a method for determining their basic rates. In general, the methods proposed were followed in calculating the proposed rate found in the Request for Comments. The calculation applied in the Request for Comments (and accompanying materials) should serve as the template for future R-1 rate determinations for ILEC packaged services.

### **III. CONCERNS WITH THIS YEAR'S CALCULATION**

#### **A. The CLEC Line Numbers and Rates Are Dramatically Different Than Those Used in Last Year's Calculation.**

Although not specifically identified in the Request for Comments, the reason for the decrease in the overall statewide average rate appears to be the method used to include additional data from Competitive Local Exchange Carriers (“CLECs”).

During last year's proceeding on this issue, WSTA encouraged the inclusion of more data into this calculation because, in the end, the goal is to determine the average cost of basic telecommunications service throughout the state. *Annual Review of the Earnings of Small Telecommunications Utilities*, Public Service Commission of Wisconsin, Docket 05-GF-147, Comments of the Wisconsin State Telecommunications

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<sup>3</sup> Last year, this verification took place after the release of the Draft Supplemental Order. See *Annual Review of the Earnings of Small Telecommunications Utilities*, Public Service Commission of Wisconsin, Docket 05-GF-147, Comments of the Wisconsin State Telecommunications Association at 4 (March 25, 2005) (noting discrepancies between rates used in the calculation and actual rates reflected in company tariffs).

Association at 3 (March 25, 2005) (pointing out that the statutory intent of Wis. Stat. § 196.215(7)(b)1 encourages the inclusion of more, rather than less data). However, the number of CLEC lines included in this year's Request for Comments represents a dramatic increase over the number included in last year's Draft Supplemental Order. The total number of CLEC lines (public and confidential) listed in last year's Draft Supplemental Order was 80,305.<sup>4</sup> This year's Request for Comments incorporates 320,558 CLEC access lines.

Interestingly, while the number of CLEC access lines increased, the R-1 rate applied to the numbers decreased significantly, from \$17.69 to \$14.13 (an approximately 20% decrease) with respect to public data and from \$18.11 to \$15.38 (an approximately 15% decrease) with respect to confidential data. These significant decreases come after a year when these rates actually saw an *increase*. See *Annual Review of the Earnings of Small Telecommunications Utilities*, Public Service Commission of Wisconsin, Docket 05-GF-147, Comments of the Wisconsin State Telecommunications Association at 8 (March 25, 2005) (reporting that the confidential data line saw an increase of \$.29 last year). Even if one could point to a general trend of decreasing costs for basic service from the consumers' perspective, the price is certainly not

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<sup>4</sup> It is hard to know the exact number of CLEC access lines included in the final calculation from last year because the Supplemental Order states only that the Commission included an "estimated" number "based on historical trends." *Annual Review of the Earnings of Small Telecommunications Utilities*, Public Service Commission of Wisconsin, Docket 05-GF-147, Supplemental Order at 2 (April 4, 2005).

decreasing at the percentage rates reflected in the Request for Comments and supporting materials.<sup>5</sup>

The method developed by the Commission staff this year may have logical underpinnings, but it is a wholesale change to the treatment of CLEC data as compared to last year's calculation. This entirely new calculation to impute a basic service price for all CLEC data results in dramatically lower prices for CLEC services. This decrease is not based on an identifiable rate reduction, but rather must be based on the method used by Commission staff to impute basic rates for certain providers.

Given this significant shift in the development of the overall R-1 rate, it would appear prudent for the Commission, for the coming year, to continue to apply a statewide average rate of \$14.96 (last year's rate) for the current year and allow for greater scrutiny of the CLEC rate determination.<sup>6</sup>

This approach also makes sense given the increased requirements on companies that recover state USF amounts authorized by Wis. Stat. § 196.218(3)(f). The portion of rates that go toward certain state USF programs must now be identified on customer bills pursuant to Wis. Stat. § 196.218(3)(f). Many of the rate increases encouraged by

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<sup>5</sup> The dramatic change in CLEC pricing cannot simply be attributed to the fact that the Commission is incorporating a significantly larger number of lines. If this were the explanation, one would expect similar changes to the AT&T rate (listed as SBC) because that line saw a decrease of 119,768 lines, yet the R-1 rate went down only minimally.

<sup>6</sup> As is noted below, with respect to the CLEC calculation, many of the assumptions used to determine a rate appear, on their face, to be logical. However, since the rate will have a significant effect on a number of regulated companies, and the imputation method applied was the subject of very little prior discussion, some additional review of the method should be done before a company is subject to an investigation based solely on the way the Commission imputed certain data.

this statutory change did not go into effect until 2006, however, these increases will be compared to the statewide average from 2005.

The changes to the method of calculating CLEC rates and the corresponding effect on the R-1 rate along with the changes to certain state USF assessment requirements encourages the Commission to consider applying the current R-1 rate of \$14.96 for this year.

B. The Commission Should Remove the Subjective Portions of the Imputation of Rates to CLEC Data

Regardless of the concerns identified above, the WSTA recognizes that incorporating a basic service rate for CLECs is a difficult task since so few CLECs offer a basic, stand-alone telephone service. In general, CLEC services are offered as part of a package of services, which includes many features not included in the R-1 rate calculation. Wis. Stat. § 196.215(7)(b)1. To incorporate more CLEC lines into the calculation, the Commission staff developed a method to impute a price for basic services.

In most cases, the imputed rate is the R-1 rate of the ILEC serving the territory where the CLEC is serving. This is fairly logical, since the assumption (for price regulated ILECs) is that discounts are generally taken off the “unregulated” packaged services and not the basic service rate. This logic, if applied consistently, provides a basis for imputing additional CLEC data into the calculation.

However, with respect to portions of this imputation methodology, there remains a significant amount of subjectivity and inconsistency in the determination. This is precisely the problem that the WSTA argued against last year. *Annual Review of*

*the Earnings of Small Telecommunications Utilities*, Public Service Commission of Wisconsin, Docket 05-GF-147, Comments of the Wisconsin State Telecommunications Association at 8 (March 25, 2005) (noting concerns with inconsistent application of CLEC data).

The most subjective determination in this year's calculation is the decision to apply a discount rate to certain CLECs (Sage Telecom and TDS Metrocom) rather than imputing the ILEC rate, as is done with the vast majority of CLECs. The decision to apply a discount rate was made because the packages offered by these companies were determined to be "similar" to the packages offered by AT&T. Aside from the fact that this requires a highly subjective determination of what is and what is not "similar" to another service offering, applying the discount rate is not a logical choice. The discount rate for AT&T was established by taking discounts off of rates that are tariffed. The major problem with calculating a basic rate for CLEC packages is that there are no tariffed services to form the basis for a calculation. Given this significant difference, applying the discount rate to CLEC rates does not have a logical basis.

To ensure greater consistency with the calculation it would appear proper to remove this subjective determination and apply the same calculation that is applied to the vast majority of CLECs, i.e., imputing the ILEC price in their service territory.

In the present case, this change would mean the imputation of the \$15.19 figure to the access lines reported by TDS Metrocom and Sage Telecom because they are providing service within the AT&T service territory. The \$15.19 rate is the same as is applied to Excel Communications, Inc., which is also serving only in the AT&T areas.

With respect to Sage Telecom, the WSTA does not know where Sage Telecom is serving. If they are fully within the AT&T territory, then the \$15.19 figure should be used as well. However, if they are serving in both AT&T and Verizon areas, the blended rate of \$15.51 (also applied to Budget Phone, Inc.) is the most logical. This relatively minor change would go a long way to provide the consistent method of imputing rates that all parties are seeking in this calculation.

Making this modification would marginally increase the overall R-1 rate, keeping it nearly identical to last year's rate. This outcome would appear to be more consistent with the industry's experience of seeing marginal rate *increases* rather than decreases.

### **CONCLUSION**

For the reasons outlined above, the WSTA believes that, at the very least, the Commission should incorporate minor changes to the calculation of the rates attributed to TDS Metrocom and Sage Telecom. Applying a specific figure (rather than a discount rate) to these CLECs will bring greater uniformity to the treatment of CLEC data.

In the alternative, because the CLEC imputation method is such a significant change in this year's calculation, the Commission should consider applying the current rate of \$14.96 and allow for additional scrutiny to the assumptions made in CLEC rate imputation.

Dated this 23<sup>rd</sup> day of March, 2006.

**WISCONSIN STATE TELECOMMUNICATIONS ASSOCIATION**

By: /s/ *Brian J. Rybarik*

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