

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

COMCAST PHONE OF WASHINGTON,
LLC

Application for Mitigation of Penalties or
for Stay

In the Matter of

COMCAST PHONE OF WASHINGTON,
LLC

Petition for an Interpretive and Policy
Statement or Declaratory Ruling

Docket Nos. UT-031459 and
UT-031626 (consolidated)

**PUBLIC COUNSEL REPLY TO
MOTIONS FOR SUMMARY
DETERMINATION**

I. INTRODUCTION

Public Counsel submits this reply in response to issues raised in the Motions for Summary Determination filed on or about December 5, 2003, by Comcast Phone of Washington, LLC (“Comcast” or “Company”), AT&T Communications of the Pacific Northwest, Inc. (“AT&T”), and other parties in this consolidated proceeding regarding Comcast’s obligations under the Commission’s service quality rules. For the reasons set forth below, we recommend that the Commission deny Comcast’s request that it be exempted from application of the rule at issue.

II. ARGUMENT

The Commission penalized Comcast because the company failed to comply with WAC 480-120-439, the service quality reporting rule. Comcast's motion for summary determination largely restates the reasoning set forth in the company's Petition for Mitigation, asserting that WAC 480-120-439 does not apply to competitive local exchange companies (CLECs). First, Comcast asserts that the rule applies to "Class A companies," but does not specifically state that it applies to CLECs. Second, Comcast asserts that the term "Class A company" has historically only applied to ILECs. Third, Comcast asserts that the Federal Communications Commission's "Class A/B" categorization only applies to ILECs. Fourth, Comcast argues that "construing WAC 480-120-439 to apply to CLECs such as Comcast Phone violates state law and public policy which favor flexible and streamlined competition to promote competition." Comcast Phone Motion for Summary Determination at p. 2. As explained below, Comcast's arguments are without merit and are not supported by the facts.

A. WAC 480-120-439 Applies to All Local Exchange Companies Serving More than Two Percent of Access Lines in Washington, Including CLECs

Comcast and AT&T make a strained, illogical argument that they should not be considered "Class A companies" and should therefore be exempt from WAC 480-120-439, the service quality reporting rule. Their argument is unsupported by the language of the rule itself, or by the record in the telecommunications rulemaking proceeding, UT-990146. *See* Commission Staff Motion, pp. 4 - 9.

The Commission rules on their face require larger CLECs – those with more than two percent of the state's access lines – to file service quality reports with the Commission. WAC 480-120-439 requires Class A companies to file monthly service quality reports with the Commission. WAC 480-120-021 defines "Class A" companies as those local exchange companies with more than two percent of the state's access lines. This definition, as well as the service quality reporting rule, applies to the larger local exchange companies—both incumbent and competitive LECs.

Comcast does not appear to dispute that it serves more than two percent of the access lines in Washington and is a local exchange carrier. Tr. At 22, ll. 4-8; *see also* Comcast Motion for Summary Determination, p. 3, n.1. Comcast therefore meets the definition of “Class A” company under WAC 480-120-021. Accordingly, like other Class A companies, it must comply with the service quality reporting rule, WAC 480-120-439.

In their motions for summary determination, Comcast and AT&T repeatedly point to WAC 480-120-302, which contains accounting requirements for companies that are not competitively classified. This argument is unpersuasive. As Commission Staff explained in its motion for summary determination, WAC 480-120-302 does nothing to narrow the definition of Class A company to exclude CLECs. Commission Staff Motion, p. 7. As Staff points out, WAC 480-120-302 establishes accounting requirements for Class A and B companies that are not competitively classified, while WAC 480-120-301 establishes accounting requirements for Class A and B companies that are competitively classified. *Id.*

B. Comcast Incorrectly Asserts That The Rulemaking Did Not Contemplate Applying the Service Quality Reporting Rule To CLECs

Comcast seems to suggest that an 11th hour change was made to the service quality reporting rule to apply the rule to CLECs. The company continues to assert that “nothing in the rulemaking put CLECs on notice that the Commission intended CLECs to be subject to service quality reporting rules.” Comcast Motion at p. 5. A review of the rulemaking record shows this claim to be without merit. As Public Counsel’s Motion for Summary Determination showed, the Commission’s January 23, 2001, Notice in the rulemaking docket included a draft set of rules that clearly applied the service quality reporting rule to CLECs. Public Counsel Motion pp. 3-4. In addition, the Commission’s August 24, 2001, Notice in the rulemaking docket similarly included a draft of the service quality reporting rule that applied the rule to “local exchange companies with two percent or more of the access lines in the state of Washington.” August 23, 2001, Draft WAC 480-120-535. This language is the very same language in the definition of “Class A Company” found in the Commission’s August 23, 2001, draft rules, and the definition

of “Class A company” as adopted by the Commission. As noted in Qwest’s Motion for Summary Determination, WorldCom and Sprint filed comments with the Commission objecting to the draft service quality reporting rule, WAC 480-120-535, requesting that CLECs be exempted from the rule. Qwest Motion ¶¶. 10-12. In light of this record, Comcast’s assertions have no valid basis.

C. Commission Rules Require CLECs to Meet Service Quality Standards, and Appropriately Require Larger CLECs to File Service Quality Reports

It is entirely appropriate and consistent with the public interest that the reporting requirements in WAC 480-120-439 apply to Comcast because, as described in Public Counsel’s initial Motion, several service quality performance standards established in the Commission’s rules apply to CLECs. In this consolidated proceeding, CLECs have not disputed that the Commission’s rules require CLECs to meet certain service quality performance standards.¹ Since CLECs must meet these service quality performance standards, it makes no sense to read the rules as exempting CLECs from the related reporting requirement, nor does it represent an undue burden to require CLECs to report their performance to the Commission. Moreover, the public interest is advanced by the required reporting in at least two ways. Such reports will allow the Commission to determine whether the larger competitive local exchange companies are meeting the Commission’s performance standards. It will also to protect consumers by undertaking rule enforcement where performance is substandard.

D. The Request for Waiver and For Mitigation of Penalty Should Be Denied

To the extent that Comcast’s reporting format must be modified in some instances due to the company’s network architecture, we believe those modifications could appropriately be addressed as part of a request for an alternative reporting mechanism, rather than an outright rule waiver. Comcast has not proposed an alternative, nor offered enough information that would allow one to be crafted.

¹ An exception to this is that Comcast continues to assert that CLECs are exempted from WAC 480-120-105. The rule contains no such exemption by its terms, and CLECs must comply with subsection (1)(c) of that rule. Comcast Motion at p. 3, n.2; Petition at p.3, n. 2.

With respect to the request for penalty mitigation, Public Counsel agrees with the arguments made by Staff in its motion. The request should be denied.

III. CONCLUSION

In summary, for the reasons outlined above, Public Counsel respectfully requests that the Commission grant its motion for summary determination and deny the Comcast motion, as supported by AT&T.

DATED this 23rd day of December, 2003.

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