

BEFORE THE
WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of:

COMCAST PHONE OF WASHINGTON,
LLC

Application for Mitigation of Penalties or for
Stay.

Docket No. UT-031459

In the Matter of:

COMCAST PHONE OF WASHINGTON,
LLC

Petition for an Interpretive and Policy
Statement or Declaratory Ruling.

Docket No. UT-031626

**MCI'S RESPONSE TO MOTIONS
FOR SUMMARY DETERMINATION**

I. INTRODUCTION

1. Intervenor, WorldCom, Inc., on behalf of its regulated subsidiaries in Washington State (n/k/a "MCI), by and through its attorneys of record, Ater Wynne LLP, hereby submits its Response to the Motions for Summary Determination filed by Staff, Qwest Corporation ("Qwest"), Public Counsel, Comcast Phone of Washington, LLC ("Comcast"), and AT&T Communications of the Pacific Northwest, Inc. and AT&T Local Services ("AT&T"). MCI supports the motions of Comcast and AT&T.

2. This case turns on the question of whether the Commission's service quality reporting rule, WAC 480-120-439, applies to CLECs, like Comcast, that serve more than two percent of the access lines in the state. That rule requires "Class A companies" to file monthly reports to the Commission containing information about a number of indicators of service quality. Specifically, Class A companies must file monthly reports relating to missed appointments, installations or activations of basic service, trouble reports, switching problems, trunk blockage, repairs, and response times for answering calls to business offices and repair centers. WAC 480-120-439(3), (4), and (6)-(10). A "Class A company" is defined in WAC 480-120-021 as "a local exchange company with two percent or more of the access lines within the state of Washington." The Staff argues that this two percent threshold comes from RCW 80.04.530, which exempts local exchange companies that serve less than two percent of the access lines in the state from certain statutory reporting requirements, including annual reports (RCW 80.04.080) and budgets (RCW 80.04.300-.330), and from requirements relating to securities (Chapter 80.08 RCW), transfers of property (Chapter 80.12 RCW), and affiliated interests (Chapter 80.16 RCW).

3. Staff, Public Counsel, and Qwest argue that, based on the language of WAC 480-120-021, the reporting requirements of WAC 480-120-439 apply to all local exchange companies serving two percent of the access lines in the state regardless of whether they are competitively classified or not. Staff Motion at 5; Public Counsel Motion at 3; Qwest Motion at 3-4.

4. Comcast and AT&T, however, argue that the history underlying reporting requirements and the Commission's historical use of Class A and Class B distinctions do not support the interpretation that the reporting requirements contained in WAC 480-120-439 should be applied to CLECs. Comcast Motion at 4-7; AT&T Motion at 3-6.

5. MCI agrees with Comcast and AT&T that the historical use of the terms “Class A company” and “Class B company”, and their use elsewhere in the Commission’s rules, suggests that those terms apply only to incumbent LECs.

6. As noted above, Staff contends that the use of the two percent threshold to distinguish between LECs that should be subject to reporting requirements and those that should not comes from RCW 80.04.530. As demonstrated by AT&T and by the bill report for SHB 1774, which became Chapter 110, Laws of 1995, and was codified as RCW 80.04.530, the intent of that bill was to reduce regulatory reporting requirements on small *incumbent* LECs and allow them to petition the Commission for an alternative form of regulation as a group. See AT&T’s Motion at 3. Thus, that statute lends no support to the argument that the detailed reporting requirements of WAC 480-12-439 apply to competitively classified LECs.

7. Further, the history of the Commission’s use of the terms “Class A company” and “Class B company” demonstrates that those terms have only been used in connection with incumbent LECs. See the Commission’s Financial Records and Reporting Rules. WAC 480-120-303, which relates to reporting requirements for competitively classified companies, makes no mention of the Class A vs. Class B distinction; however, WAC 480-120-304, which relates to reporting requirements for companies not classified as competitive, does make the distinction between Class A companies and Class B companies. WAC 480-120-305, which relates to Class B companies, similarly applies only to incumbent LECs, as does WAC 480-120-311, which refers to Class A companies and WECA in the context of access charge and universal service reporting.

8. AT&T and Comcast, in their respective motions, discuss the history of the draft rules using the Class A and Class B company distinction and, as AT&T says, reveal a “consistent

pattern of understanding and use of the Class A and B designations in, not only the industry, but also at the Washington Commission. Class A and B designations describe the division of incumbents into two categories; they do not reference competitors—nor have they ever referenced competitors.” AT&T Motion at 5-6.

9. Given this history and consistent use of the Class A and Class B designations to describe two categories of incumbents, the use of those designations in WAC 480-120-439 should also be interpreted as applying only to incumbents.

10. Comcast argues that neither the Pre-Proposal Draft nor the Adoption Order covering WAC 480-120-439 explain why the Commission or its Staff made the changes to WAC 480-120-439 that include the Class A and Class B distinction. Therefore, given the history of WAC 480-120-535 and the use of the Class A and Class B distinction throughout the draft of the rules, “CLECs could have concluded that the service quality performance reporting rules were not applicable to them.” Comcast Motion at 6. Qwest counters that CLECs were aware that the Commission intended that its reporting rule would cover them, because Sprint and WorldCom complained in written comments that the proposed service quality rules should not reach CLECs because of the administrative burden associated with compliance. Qwest Motion at 5.

11. On June 7, 2000, with respect to *proposed* WAC 480-120-535, WorldCom told the Commission :

As stated in its introduction, WCOM believes that service quality performance reports serve no purpose in a competitive market. Carriers will be held accountable by customers who can choose to stay or leave the company. A carrier with poor service quality will be unable to maintain a customer base when there are comparable services available to them through other carriers. By requiring service quality reports, carriers will be tasked with the administrative burden of tracking and reporting bureaucratic paper work whether it is needed or not. The WUTC can invoke this requirement on an as needed basis. If the commission has reasonable and documented reasons for requiring a carrier to

provide held service order reports or trouble reports, they should request reports from the carriers; however, if no problem or quality issue exists, there is no reason to expend valuable resources (both for carriers and the WUTC) toward this effort.

See In the Matter of Amending, Adopting and Repealing: Chapter 480-120 WAC Relating to Telecommunications Companies, Docket UT-990146, WorldCom's Comments on Technical Rules, at 4 (June 7, 2000).

12. In subsequent comments, WorldCom stated the following about the service quality reporting requirement set forth in the draft rule:

In regards to service quality reporting for CLECs, WCOM believes that CLEC's [sic] should not be held to the same reporting standards as the ILEC for the same reasons stated above [competitive reasons; CLECs are dependent on ILECs for facilities]. The imposition of such a requirement would impede competition, not enhance it.

In the Matter of Amending, Adopting and Repealing: Chapter 480-120 WAC Relating to Telecommunications Companies, Docket UT-990146, Comments of WorldCom – Technical Rules, at 1 (Feb. 14, 2001).

13. These comments demonstrate only WorldCom's belief that requiring service quality reporting for CLECs is unnecessary; they say nothing about what the Commission intended by adopting the rule with the wording referring to Class A and Class B companies. Indeed, the use of those terms suggests that the Commission intended that the reporting requirements should only apply to incumbents. Moreover, the drafts of the rules on which WorldCom commented did not use the terms "Class A" and "Class B" companies to refer to CLECs.

14. In their Motions, Comcast and AT&T correctly point out that the clear policy of this state is that competitive telecommunications companies be subject only to "minimal

regulation.” RCW 80.36.320. See AT&T Motion at 1-2; Comcast Motion at 7-8. “Minimal regulation” means that the competitive company may file price lists that shall be effective on ten days’ notice instead of tariffs and that other regulatory requirements should be waived where competition will serve the same purpose as public interest regulation. *Id.* Here, the imposition on CLECs of the onerous service quality reporting requirements as proposed by the Staff is unnecessary to protect the public interest; competition will ensure that the competitive companies’ service quality will remain high. Because, by definition, they face effective competition from the dominant incumbents, CLECs must maintain acceptable service quality or they will lose customers to the incumbents or to other CLECs. In other words, because of the pressures that naturally result in a competitive marketplace, it is only necessary to regulate the service quality of the dominant incumbents. WAC 480-120-439 should be interpreted consistently with this fact; namely, the reporting requirements set forth in that rule should be interpreted as applying only to incumbent LECs that meet the definitions of Class A or Class B companies.

II. CONCLUSION

15. For the reasons discussed above, MCI requests the Commission not impose the reporting requirements Staff proposes to impose on Comcast. Accordingly, the Commission should deny Staff’s, Public Counsel’s, and Qwest’s Motions for Summary Determination and, instead, grant those of Comcast and AT&T.

RESPECTFULLY SUBMITTED this 23rd day of December, 2003.

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CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of December, 2003, served the true and correct original, along with the correct number of copies, of the foregoing document upon the WUTC, via the method(s) noted below, properly addressed as follows:

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

DATED this 23rd day of December, 2003, at Seattle, Washington.


