

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of
Amending and Repealing certain rules in

WAC 480-120

Relating to
The Washington Telephone Assistance
Plan (WTAP) and to the Washington
Exchange Carriers Association (WECA)

DOCKET UT-160196

GENERAL ORDER R-587

ORDER REPEALING AND
AMENDING RULES
PERMANENTLY

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission (Commission) takes this action under Notice WSR # 16-11-
096, filed with the Code Reviser on May 18, 2016. The Commission has authority to take
this action pursuant to RCW 80.01.040, RCW 80.04.160, RCW 80.36.135 and RCW
80.36.440.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative
Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State
Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act
(RCW 19.85).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date this Order is
entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW
34.05.325(6) requires the Commission to prepare and publish a concise explanatory
statement about an adopted rule. The statement must identify the Commission's reasons
for adopting the rule, describe the differences between the version of the proposed rules
published in the register and the rules adopted (other than editing changes), summarize
the comments received regarding the proposed rule changes, and state the Commission's
responses to the comments reflecting the Commission's consideration of them.

5

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 22, 2016

TIME: 8:50 AM

WSR 16-20-003

To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including appendices, as its concise explanatory statement. This Order provides a complete but concise explanation of the agency's actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This Order amends and repeals the following sections of the Washington Administrative Code:

Amend	WAC 480-120-121	Definitions.
Amend	WAC 480-120-061	Refusing service.
Amend	WAC 480-120-103	Application for service.
Amend	WAC 480-120-174	Payment arrangements.
Repeal	WAC 480-120-259	Washington telephone assistance program
Repeal	WAC 480-120-352	Washington Exchange Carrier Association

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:**
The Commission filed a Preproposal Statement of Inquiry (CR-101) on March 2, 2016, at WSR # 16-06-119.

8 The statement advised interested persons that the Commission was considering entering a rulemaking as a follow up to the rulemaking in Docket UT-140680. The Commission repealed WAC 480-120-440 in that proceeding, and the rule contained important service outage restoral requirements, as well as notice requirements related to planned outages. Other rules in WAC 480-120 contain cross-references to rules that were repealed. The Washington Telephone Assistance Program (WTAP) no longer exists, and rules related to that program are moot. Similarly, the Washington Exchange Carrier Association (WECA) has been discontinued because the Commission now handles WECA's primary function of administering a universal service fund pursuant to rules in WAC chapter 480-123, so WAC 480-120-352 is unnecessary. The Commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all parties interested in the previous rulemaking docket UT-140680, all registered telecommunications companies, and the Commission's list of telecommunications attorneys. Pursuant to the notice, the Commission received written comments on April 4, 2016.

9 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on May 18, 2016, at WSR #16-11-096. The Commission scheduled this matter for oral comment and adoption under Notice WSR #16-11-096 at

9:30 a.m., Tuesday, July 12, 2016, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The date of the hearing was subsequently changed to Monday, July 18, 2016, under Notice WSR #16-13-097. The Notice provided interested persons the opportunity to submit written comments to the Commission.

- 10 **WRITTEN COMMENTS:** The Commission received written comments from the Washington Independent Telecommunications Association (WITA), Frontier Communications NW, Inc. (Frontier), and CenturyLink. Summaries of all written comments and Commission Staff's responses are contained in the Commission staff (Staff) memorandum included in Appendix A, attached to, and made part of, this Order.
- 11 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on Monday, July 18, 2016, before Chairman David W. Danner, Commissioner Philip B. Jones, and Commissioner Ann E. Rendahl. The Commission heard oral comments from Staff, CenturyLink, Frontier, and WITA, all of which repeated and expanded on the written comments.
- 12 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED:** Written and oral comments suggested changes to the proposed rules. The suggested changes and Staff's response are included in Appendix A. The Commission agrees with and adopts the responses to the suggested changes in that appendix except with respect to adoption of WAC 480-120-441.¹ The Commission concurs with CenturyLink, Frontier, and WITA that the Commission should not adopt that rule at this time.
- 13 The Commission agrees with the commenters that the record in Docket UT-140680 does not support the conclusion that the Commission inadvertently repealed WAC 480-120-440 in that prior rulemaking. The adoption order identifies, although does not discuss, that rule, and Staff included the rule in its original proposal and responded to comments from one commenter who objected to the rule's repeal. The Commission may not have fully considered the impact of repealing that rule, but we cannot say that its repeal was due to a ministerial error. Accordingly, we must determine whether the record demonstrates a need to readopt that rule.² We conclude that it does not.

¹ The Commission also modifies for clarity the revised language WITA proposed to the definition of "Order date" in WAC 480-120-021.

² CenturyLink observes that the CR 101 expressly states that the Commission proposed to readopt WAC 480-120-440 because the Commission inadvertently repealed it, but CenturyLink concedes

- 14 CenturyLink, Frontier, and WITA contend that readopting WAC 480-120-440 is inconsistent with the Commission's past recognition of the competitiveness of the telecommunications market in Washington. Frontier and CenturyLink point to the Commission's grant of minimal or reduced regulation for both companies and to the lack of any Commission oversight over wireless and voice over Internet protocol (VoIP) companies. These commenters argue that the legacy restrictions in WAC 480-120-441 are unnecessary when dissatisfied customers have the option to obtain service from other providers and that adoption of that rule would unfairly hobble them but not their competitors.
- 15 We do not find these arguments persuasive. Minimal or reduced regulation does not mean no regulation. All of the Commission's rules governing telecommunications companies would be needlessly constraining if we accepted the commenters' position. We decline to do so. The Commission has a statutory obligation to ensure that landline telephone companies provide fair, just, and reasonable services to consumers in this state. The Commission's lack of jurisdiction to establish and enforce service quality standards for wireless and nomadic VoIP service providers does not absolve the Commission of that responsibility. We will not facilitate a race to the bottom of consumer protection.
- 16 More compelling is the information that CenturyLink, and to a lesser extent Frontier and WITA, provided in response to Staff's figures on the increased number of outage complaints since the Commission repealed WAC 480-120-440. Most, if not all, of those outages are attributable to adverse weather conditions and thus would have been excluded under that rule if it had still been in effect. All of the commenters, moreover, provided information demonstrating that they have not reduced staffing levels for technicians qualified to restore basic telephone service during that time. Staff also explained that it has relied on WAC 480-120-411 in the absence of WAC 480-120-440 to require that companies "promptly" restore service in the event of an outage. Based on the information before us, we do not believe that the record sufficiently warrants re adoption of the repealed rule, at least in that form.
- 17 We nevertheless find that Staff has raised concerns that merit further consideration. Fair, just, and reasonable telecommunications service includes an obligation to restore service following an outage as expeditiously as practicable. As Staff points out, other states have rules that reflect this principle.³ The Commission continues to receive complaints from

that this statement does not preclude the Commission from adopting proposed WAC 480-120-441 on other grounds. TR 16:21 – 17:6.

³ See Appendix A, Staff Memo at 4 (describing the applicable rules in four other states).

customers that their service provider is not satisfying this requirement, and many of those consumers do not have a competitive alternative. While we are not prepared to readopt former WAC 480-120-440, we are not satisfied to rely solely on WAC 480-120-411 to address this issue. The existing rule's requirement that problems be remedied "promptly," for example, provides insufficient guidance to both companies and consumers on what constitutes a reasonable time in which providers must restore service.

18 Accordingly, we will open another rulemaking to consider the appropriate standard for restoring regulated telecommunications service following an outage. Pending the conclusion of that rulemaking, we find that, in the absence of extenuating circumstances, 48 hours is an appropriate benchmark for determining whether a company has "promptly" repaired or restored service problems in compliance with WAC 480-120-411. Extenuating circumstances include, but are not necessarily limited to, severe weather, natural disasters, or other causes beyond the company's control for as long as those conditions persist.

19 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend and repeal the rules as proposed in the CR-102 at WSR # 16-11-096 with the changes described below.

20 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal with the following changes from the text noticed at WSR #16-11-096:

WAC 480-120-021 Definition of "**Order date**," second sentence, strike "the actions are completed by the applicant if" and substitute "those actions have been completed and the applicant notifies the company of that completion unless" and strike the following "not".

WAC 480-120-174 Subsection (2), strike all references to the Washington telephone assistance program or WTAP.

WAC 480-120-441 Not adopted.

21 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that the WAC sections listed in paragraph 6 above should be amended or repealed to read as set forth in Appendix B, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

22 **THE COMMISSION ORDERS:**

23 The Commission amends and repeals the sections in WAC Chapter 480-120 to read as set forth in Appendix B, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

24 This Order and the rule set out below, after being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, September 22, 2016.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



PHILIP B. JONES, Commissioner



ANN E. RENDAHL, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 4, repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

Appendix A
(Commission Staff Memorandum)

Appendix B
[WAC 480-XX - RULES]