Agenda Date: July 28, 2004
Item Number: C1

Docket: **UT-040015**

Subject: Rulemaking to Consider Corrections and Changes to Rules in Chapter 480-120 WAC, Chapter 480-122 WAC, and Chapter 480-80 WAC Relating to Telecommunications

Staff: Sharyn Bate, Regulatory Analyst
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Recommendation:

Direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser in Docket UT-040015 proposing corrections and changes to rules in Chapter 480-120 WAC, Chapter 480-122 WAC, and Chapter 480-80 WAC relating to telecommunications.

Background:

On January 27, 2004, the Commission filed a Preproposal Statement of Inquiry, CR-101, with the Code Reviser, opening a rulemaking that would consider possible corrections and changes to rules relating to telecommunications, including rules in Chapter 480-120 WAC (Telephone Operations), Chapter 480-122 WAC (Washington Telephone Assistance Program), Chapter 480-80 WAC (Utilities General— Tariffs, Price Lists, and Contracts).

The intent of the rulemaking is a "tune-up" of rules to make minor corrections, delete provisions no longer consistent with federal law, delete provisions that have been struck down in court, make grammar changes, and address issues that remained after the major review undertaken in 2000-2002.

The Commission held a stakeholder workshop in March 2004, and solicited two rounds of written comments from stakeholders. The draft proposal incorporated several of the

stakeholders' proposed changes. Remaining issues include the following:

1. **Definition of Class A and Class B companies.** Competitive Local Exchange Companies (CLECs) argue that they should not be subject to service quality reporting requirements and that parity between CLECs and ILECs is inappropriate.

   Response: The proposed language is pure "tune-up." The proposal makes no policy change in how CLECs are treated. The debate is really about whether to have service quality standards and reports for larger CLECs. It takes the form of an argument over what constitutes a Class A (i.e., reporting) company.

2. **Service quality performance reports.** AT&T and Comcast would like the Commission to limit service quality standards and reporting to incumbent LECs. According to AT&T and Comcast, if the rules are to apply to CLECs, there should be changes made to reflect differences in their operating practices and network design. Qwest's interest is to ensure that its Commission-approved alternative reporting format is not voided by an amendment to the rule.

   Response: There is a complex set of issues regarding whether to impose service standards on competitive companies, whether to impose service standards on non-competitive or semi-competitive companies, whether to require reports on compliance with those standards, and whether to require reports on performance in areas where there is no substantive standard.

   In 2002, the Commission decided after extensive comment and deliberation to exempt CLECs from some, but not all, performance standards and to require reports on a set of metrics that does not align with the performance standards. It also decided to apply the same reporting requirements to CLECs and ILECs, regardless whether they were subject to the same performance standards.

   Stakeholders present no new arguments from those previously advanced in Docket UT-990146. The CLECs' arguments about different practices and architecture can be handled through the alternative reporting process, which the Commission recently used with Comcast. The claims about operating practices and network design are

overstated.

3. **Customer Proprietary Network Information.** Public Counsel and other consumer advocates propose that the Commission pursue an opt-in requirement or adopt additional requirements for opt-out notice and procedures.

   AT&T and MCI support adopting the federal rules. Comcast argues that state enforcement of federal regulations will be duplicative and could lead to conflicting interpretations. Verizon questions the need for state rules and says state rules would impose additional reporting requirements.

   Response: At a minimum, the invalidated rules should be repealed. Adoption of the federal rules would improve the Commission's ability to protect customer privacy. The concerns about duplication and inconsistency have some merit, but on balance the Commission believes this is a reasonable approach.

4. **Response time for calls to business office or repair center during regular business hours.** MCI and Qwest support AT&T's proposal to change an average answer time of sixty second to ninety seconds. AT&T contends that this change reflects months and months of discussion and cooperative effort between Staff and industry that created rules capable of protecting consumer interests while taking advantage of new technologies aimed at efficiently and quickly directing calls to the appropriate response centers. Verizon wants language that will encompass different types of messages companies use. Public Counsel is concerned with weakening this standard.

   Response: The industry proposal represents a substantial change in the performance standard. The industry has not supplied any evidence of actual performance or costs to support its proposal. It would be better to address this issue by inviting the industry to make a formal petition, supported by evidence, to amend the rule.

This rulemaking will focus on the minor changes included in Attachment A. Substantive rule changes may be addressed in a future rulemaking.

Recommendation:

Staff recommends that the Commission direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) with the office of the Code Reviser in Docket UT-040015.

Attachment A