

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of)	DOCKET UT-060676
Amending, Adopting, and Repealing)	
Rules Relating to)	GENERAL ORDER R-540
)	
WAC 480-80, 480-120, and 480-121,)	
)	ORDER AMENDING, ADOPTING
Relating to Eliminating the)	AND REPEALING RULES
Requirement that Telecommunications)	PERMANENTLY
Companies File Price Lists)	
)	
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under CR-101 Notice WSR #06-10-089, filed with the Code Reviser on May 3, 2006, CR-102 Notice WSR #06-16-033, filed with the Code Reviser on July 25, 2006, and Supplemental CR-102 Notice WSR # 06-21-050, filed with the Code Reviser on October 13, 2006. The Commission initiated this proceeding to revise rules consistent with changes to RCW 80.36.010, RCW 80.36.110, RCW 80.36.320, RCW 80.36.330 and the enactment of RCW 80.36.333 and RCW 80.36.338 during the 2006 legislative session, and pursuant to the Commission’s authority to adopt rules under RCW 80.01.040 and RCW 80.04.160.

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 provide to commenters a concise explanatory statement about an adopted rule. The statement must identify the Commission’s reasons for adopting the rule, a description of the differences between

the version of the proposed rules published in the register and the rules adopted (other than editing changes), a summary of the comments received regarding the proposed rule changes, and the Commission's responses to the comments reflecting the Commission's consideration of them.

5 In this docket, to avoid unnecessary duplication, the Commission designates the discussion in this Order, including appendices, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, the documents provide 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, adopts, and repeals the following sections of the Washington Administrative Code:

Amend WAC 480-80-010 Application of rules.

Amend WAC 480-80-015 Exemptions from rules in chapter 480-80 WAC.

Amend WAC 480-80-030 Definitions.

Amend WAC 480-80-031 Delivery of tariff and contract filings.

Amend WAC 480-120-011 Application of rules.

Amend WAC 480-120-021 Definitions.

Amend WAC 480-120-026 Tariffs.

Amend WAC 480-120-028 Registration.

Amend WAC 480-120-061 Refusing service.

Amend WAC 480-120-102 Service offered.

Amend WAC 480-120-103 Application for service.

Amend WAC 480-120-104 Information to consumers.

- Amend WAC 480-120-122 Establishing credit -- Residential services.
- Amend WAC 480-120-161 Form of bills.
- Amend WAC 480-120-171 Discontinuing service -- Customer requested.
- Amend WAC 480-120-172 Discontinuing service -- Company initiated.
- Amend WAC 480-120-255 Information delivery services.
- Amend WAC 480-120-263 Pay phone service providers (PSPs).
- Amend WAC 480-120-264 Prepaid calling services.
- Amend WAC 480-120-352 Washington Exchange Carrier Association (WECA).
- Amend WAC 480-120-436 Responsibility for drop facilities and support structure.
- Amend WAC 480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies.
- Amend WAC 480-120-540 Terminating access charges.
- Amend WAC 480-120-560 Collocation.
- Amend WAC 480-121-011 Application of rules.
- Amend WAC 480-121-018 Delivery of a filing.
- Amend WAC 480-121-020 Requirements for applications for registration and petitions for competitive classification.
- Adopt WAC 480-120-266 Information about telecommunications services provided pursuant to competitive classification.
- Repeal WAC 480-80-201 Use of price lists.
- Repeal WAC 480-80-202 Interpretation and application of price lists.

- Repeal WAC 480-80-203 Transmittal letter.
- Repeal WAC 480-80-204 Price lists format and content.
- Repeal WAC 480-80-205 Effective date of price list filings.
- Repeal WAC 480-80-206 Price list availability to customers.
- Repeal WAC 480-80-241 Filing contracts for services classified as competitive.
- Repeal WAC 480-80-242 Using contracts for services classified as competitive.
- Repeal WAC 480-120-196 Customer notice requirements -- Competitively classified telecommunications companies or services.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on May 3, 2006, at WSR # 06-10-089.

- 8 The statement advised interested persons that the Commission was considering changes to rules relating to price lists in light of statutory changes to RCW 80.36 during the 2006 legislative session in which the legislature eliminated the requirement that telecommunications companies files price lists. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by a notice to all telecommunications companies, to the Commission's list of persons interested in telecommunications, and rulemakings, and to the Commission's lists of regulatory attorneys. The Commission posted the relevant rulemaking information on its Internet web site at <http://www.wutc.wa.gov/060676>.

- 9 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Notice of Proposed Rulemaking (CR-102) on July 25, 2006, at WSR #06-16-033. The Commission scheduled this matter for oral comment and adoption under the notice at WSR #06-16-033 at 1:30 p.m., Wednesday, September 13, 2006, in the Commission's

Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

- 10 **WRITTEN COMMENTS:** The Commission received written comments from AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, TCG Oregon, Integra Telecom of Washington, Inc., and XO Communications Services, Inc. (collectively “Joint CLECs”), United Telephone Company of the Northwest d/b/a Embarq (Embarq), Verizon Northwest Inc. (Verizon), and Qwest Corporation (Qwest). Summaries of written comments and Commission responses are presented below.
- 11 **SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Supplemental Notice of Proposed Rulemaking (Supplemental CR-102) on October 13, 2006, at WSR #06-21-050. The Commission scheduled this matter for oral comment and adoption under the notice at WSR #06-21-050 at 1:30 p.m., Wednesday, December 13, 2006, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission. On December 15, 2006, the Commission issued a notice to allow additional time for the Office of Public Counsel of the Office of the Attorney General of Washington (Public Counsel) to submit additional comments, and for replies by other parties.
- 12 **WRITTEN COMMENTS:** The Commission received written comments from Embarq, Public Counsel, Verizon, and Qwest. Summaries of written comments and Commission responses are presented below.
- 13 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on December 13, 2006, before Chairman Mark H. Sidran, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. The Commission heard oral comments from Judith Krebs, Assistant Attorney General, for Public Counsel.

14 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED OR ACCEPTED:**

Stakeholders submitting written and oral comments suggested changes to the proposed rules. The suggested changes and the Commission's reason for rejecting or accepting the suggested changes are as follows:

15 Embarq opposed proposed WAC 480-120-266(1)(b), which states "[t]he commission will, when appropriate, investigate or complain against a rate, term or condition provided pursuant to competitive classification." Embarq also opposed WAC 480-120-266(1)(c), which indicates how the Commission will treat ambiguity in complaints. The proposed language at issue is as follows: "If the commission determines that a rate, term or condition for service offered pursuant to competitive classification is ambiguous, there is a rebuttable presumption that the ambiguity should be construed in the favor of the customer." Embarq commented that the term "ambiguous" is itself ambiguous, and that the presumption that any ambiguity should be construed in favor of the complainant creates a different standard from the statute.

16 Qwest and Verizon also found the language in both (1)(b) and (1)(c) to be problematic. Alternatively, Embarq suggested substituting the wording from RCW 80.36.330(4), "The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable."

17 We note that the language in proposed WAC 480-120-266(1)(b) is almost identical to the second sentence in WAC 480-80-202(1)(a), "[t]he commission will, when appropriate, investigate a price list or complain against a price list." Because we are deleting reference to the price list filing requirement in this rulemaking, we are repealing WAC 480-80-202 in its entirety. The Commission finds it appropriate, nonetheless, to retain authority in our rules to investigate or complain against a rate, term, or condition provided pursuant to competitive classification, notwithstanding the fact that the price list filing requirement no longer exists. By retaining this authority in rules, the Commission makes its intentions, practices, and procedures known to all affected telecommunications companies.

18 With regard to the companies' concerns about WAC 480-120-266(1)(c), we agree that the rule should be consistent with the statutory standard. While substituting the language from the statute as proposed would indeed be expeditious treatment of the commenting companies' interests, we believe that it is nevertheless appropriate to indicate clearly how the Commission will in the future address complaints about ambiguities. In conclusion, we adopt the following language in proposed rule WAC 480-120-266(1)(c) as consistent with statutory standards:

If the commission determines that a rate, term or condition for service offered pursuant to competitive classification is ambiguous, there is a rebuttable presumption that the ambiguity should be construed in the favor of the customer unless the rate, term or condition was not proposed by the company.

19 All parties except Public Counsel expressed varying degrees of opposition to our proposal to include in WAC 480-120-266 a requirement to post on an Internet Web site information about intrastate services offered pursuant to competitive classification. Public Counsel supported this requirement. Because we find RCW 80.36.100(5) eliminates the requirement to publish and keep schedules of rates, tolls, rentals, and charges for messages, conversations and services provided pursuant to competitive classification, we also find that the Commission does not have the authority to require that such rates be posted on an Internet Web site.

20 Verizon argued that the Commission should adopt rules providing guidelines governing the transition process of eliminating price lists as required by RCW 80.36.333 and RCW 80.36.338. We decline to adopt such rules. The statutes are clear and the transition process is nearly over. If we were to adopt rules, they would merely reiterate the statute, and would need to be repealed almost as soon as they went into effect since the transition process is nearly over and the rules would no longer apply.

21 Verizon also argued that the revised rules should consistently reference the term "competitive contracts" as a replacement for the term "price lists." We have considered Verizon's proposal and find that it would be unduly restrictive because the proposal presumes that all services rendered pursuant to competitive classification after elimination of the price list filing requirement will necessarily be offered via competitive contracts. To preserve maximum competitive flexibility, we choose

instead to delete reference to “price lists” in our rules and to use the phrase, “information about intrastate telecommunications service provided pursuant to competitive classification,” and other variations of this language.

22 Various other relatively minor grammatical edits were recommended and either adopted or rejected.

23 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend and adopt the rules as proposed in the Supplemental CR-102 at WSR #06-21-050 with the changes described below.

24 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal with the following changes from the text noticed at WSR #06-21-050.

We recognize that the language governing ambiguous offers proposed in WAC 480-120-266(1)(c) could be interpreted as different from the prevailing law of contracts that a term will be proposed against the party drafting the term. Therefore, we amend the proposed rule to provide that contract language will be construed against the company unless the company did not propose the term.

We revise proposed WAC 480-120-266 to eliminate the Internet Web posting requirement, for the reasons set out in the discussion above.

We reject Verizon’s proposal to adopt rules governing the interim process of eliminating price lists as set forth under RCW 80.36.333 and RCW 80.36.338 for the reasons set out above.

We also reject Verizon’s proposal to use the term “competitive contracts” in lieu of “price lists” for the reasons set out above.

We adopt various grammatical edits.

25 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-80-010, WAC 480-80-015, WAC 480-80-030, WAC 480-80-031, WAC 480-120-011, WAC 480-120-021, WAC 480-120-026, WAC 480-120-028, WAC 480-120-061, WAC 480-120-102, WAC 480-120-103, WAC 480-120-104, WAC 480-120-122, WAC 480-120-161, WAC 480-120-171, WAC 480-120-172, WAC 480-120-255, WAC 480-120-263, WAC 480-120-264, WAC 480-120-352, WAC 480-120-436, WAC 480-120-450, WAC 480-120-540, WAC 480-120-560, WAC 480-121-011, WAC 480-121-018, and WAC 480-121-020 should be amended, WAC 480-80-201, WAC 480-80-202, WAC 480-80-203, WAC 480-80-204, WAC 480-80-205, WAC 480-80-206, WAC 480-80-241, WAC 480-80-242 and WAC 480-120-196 should be repealed, and WAC 480-120-266 should be adopted to read as set forth in Appendix A, 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

THE COMMISSION ORDERS:

26 The Commission amends WAC 480-80-010, WAC 480-80-015, WAC 480-80-030, WAC 480-80-031, WAC 480-120-011, WAC 480-120-021, WAC 480-120-026, WAC 480-120-028, WAC 480-120-061, WAC 480-120-102, WAC 480-120-103, WAC 480-120-104, WAC 480-120-122, WAC 480-120-161, WAC 480-120-171, WAC 480-120-172, WAC 480-120-255, WAC 480-120-263, WAC 480-120-264, WAC 480-120-352, WAC 480-120-436, WAC 480-120-450, WAC 480-120-540, WAC 480-120-560, WAC 480-121-011, WAC 480-121-018, and WAC 480-121-020, and repeals WAC 480-80-201, WAC 480-80-202, WAC 480-80-203, WAC 480-80-204, WAC 480-80-205, WAC 480-80-206, WAC 480-80-241, WAC 480-80-242 and WAC 480-120-196, and adopts WAC 480-120-266 to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after filing with the Code Reviser pursuant to RCW 34.05.380(2).

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

DATED at Olympia, Washington, March __, 2007.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, 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 1, amended 27, repealed 9.

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 0, repealed 0.

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.