

Agenda Date: September 12, 2007
Item Numbers: A1 through A5

Dockets: UT-071571, UT-071572, UT-071573, UT-071574, UT-071575
Company: Ellensburg Telephone Company
YCOM Networks, Inc.
Mashell Telecom, Inc.
Verizon Northwest, Inc.
United Telephone Company of the Northwest

Staff: Wilford Saunders, Assistant Director, Telecommunications

Recommendation

Grant each of the indicated petitions in part, with certain exceptions necessary to protect consumers and the public interest described in Staff's Attachment A.

Discussion

During the 2007 legislative session the commission supported an industry consensus bill¹ to allow bundles of telecommunications services to be minimally regulated under certain conditions.

Bundling of telecommunications services as a single retail offering has become a popular practice among all providers of telephone service, and the incumbent carriers regulated by the commission have stated that their customers prefer bundles over tariffed offerings à la carte.

The petitions presented in Dockets UT-071571 through UT-071575 ask the commission to implement the new statutory provisions for the petitioning companies. Specifically, the petitioners ask that the commission's order provide that the following not apply to their packages and bundles under minimal regulation:

- a. RCW 80.36.100, RCW 80.36.110 (Tariffs)
- b. WAC 480-80 (Tariffs & Contracts)
- c. WAC 480-120-103(1)(a) (Application for service)
- d. RCW 80.36.150 (Contracts)
- e. WAC 480-120-161² (Form of Bills)

All the petitions are substantially similar, and follow staff recommendations during technical assistance sessions with the petitioners over the past several months. With minor exceptions, staff supports the petitions.

The law requires the commission to grant the petitions, provided that:

¹ SHB 2103 and companion SB 5888, Laws of 2007, Chapter 26, Laws 2007, Section 2, yet to be codified

² Embarq (United Telephone) requests waiver only of certain subsections, the others request waiver of the entire rule.

- (a) Each noncompetitive service in the package or bundle is readily and separately available to customers at fair, just, and reasonable prices;
- (b) The price of the package or bundle is equal to or greater than the cost for tariffed services plus the cost of any competitive services as determined in accordance with RCW 80.36.330(3); and
- (c) The availability and price of the stand-alone noncompetitive services are displayed in the company's tariff and on its web site consistent with commission rules.

The law additionally allows the commission to waive any regulatory requirement under Title 80 with respect to packages or bundles of telecommunications services if it finds those requirements are no longer necessary to protect the public interest.

Pricing Flexibility

The 2007 legislation offers a path to pricing flexibility for bundles of telecommunications services upon approval by the commission of a company's petition for minimal regulation. If the petition is granted the prices of bundles will be exclusively regulated by the terms of the 2007 legislation: the price of the package or bundle must be equal to or greater than the cost for tariffed services plus the cost of any competitive services.

Disconnection & Reconnection WAC 480-120-061(f),(g)

Although the petitions do not request waiver of this rule, staff recommends that the Commission clearly order specific implementation measures for this rule in the context of sale of bundles. A customer who purchases a bundle and is disconnected for non-payment of charges potentially including non-regulated services should not be barred from subscribing to basic service. The commission should clarify that where a former customer of a package or bundle subject to minimal regulation that contained a basic service component has an outstanding balance on the prior account and applies for new basic service on a stand-alone basis, the carrier shall not condition provision of that new service on payment of amount exceeding the stand-alone, flat rate service charges (including taxes, fees and surcharges) multiplied by the time period covered by the former customer's nonpayment of package or bundle price and adjusted for partial payments.

Notice to Customers

As above, staff recommends that the Commission clearly order specific implementation measures in the context of sale of bundles. It is important that customers considering purchase of a minimally regulated bundle and customers disconnected for non-payment understand the protections available to them under commission rules. To help customers understand their rights and responsibilities the Company should at a minimum provide the following notice to its customers:

- 1) Direct written notice consistent with WAC 480-120-104 to all customers describing their rights and responsibilities when purchasing a bundle. The Company should provide this notice before minimal regulation of any existing bundle becomes effective.

Customers subscribing to new bundle offerings must also be notified when beginning service consistent with WAC 480-120-104.

2) Inform customers disconnected for non-payment that they may be reconnected to basic service and the conditions related to that reconnection. The Company should work with Commission staff in developing this customer information.

Form of Bills, WAC 480-120-161

While four of the petitions request waiver in whole of this rule, Staff recommends more narrowly tailored waivers – broad enough only to enable the effective sale of minimally regulated bundles. Bundles of telecommunications services do not readily or easily comply with the commission’s rules on the form of bills (WAC 480-120-161). In many cases bundled service includes unlimited calling, television, wireless or other non-regulated services that do not lend themselves to itemized listing by call, for example. However, some provisions of the form of bills rule have significant consumer protection value and remain applicable even to bundles. These provisions should be retained and required. For example, subsection (7) requires that carriers provide an itemized statement of all charges when requested by a customer – a useful bill history needed for resolution of billing disputes -- but also specifies that the itemized statement indicate the duration of calls and the names of information services providers like ISPs. In Staff’s opinion the useful principle should be retained and the specifics should be found inapplicable to bundles.

Specifically, only the following subsections of WAC 480-120-161 can and should be deemed inapplicable to bundles:

Subsection	Subject
4	Bill organization
(b)	Name of each provider
(c)	Charges itemized by provider
(d)	Change in service provider
(e)	Web address of tariff
5	Descriptions of billed charges
(a)	Individual calls itemized
(b)	FCC charges itemized
(c)	Local taxes itemized
6	Charges for which service can be discontinued
7	Itemized statement
(a)	Rates for individual services
(b)	“Calculations of time or distance charges for calls” only
(c)	Name & address of information service providers

Competitively-classified services are typically exempted from the provisions of law and rule that require publication of rates, terms and conditions. Because the 2007 legislation indicates that minimal regulation of bundles is to have the same meaning as in the competitive classification statute, waiver of these sections pursuant to minimal regulation of bundles is appropriate.

Application for Service, WAC 480-120-103(1)(a)

The petitioning companies represent that applications for bundled services including non-tariffed, non-regulated services should not be held to the tariff standards for initiation of service. The law requires that all non-competitive elements of a bundle be readily and separately available from tariff. Staff is satisfied that, provided the carrier continues to accept applications for tariffed service in compliance with the rule, the public interest will not be harmed by waiving application of this rule to bundles.

Contracts, RCW 80.36.150, WAC 480-80

The petitioners request that the commission find that rules and statutes governing contracts are not applicable to bundles. The requested scope of the waiver is broad, encompassing some provisions that are not exempted even for competitively classified companies. Staff recommends that the commission find that only the following provisions are not applicable to bundles:

Subsection	Subject
RCW 80.36.150 (5)	requires that competitive and noncompetitive services be unbundled
WAC 480-80-015	Exemptions from rules
WAC 480-80-101 - 134	Tariff filing requirements, rejection, promotions, etc.
WAC 480-80-142(1), (7)	Individual filing requirement & retail restrictions
WAC 480-80-143	Special contracts for gas & electric companies

The remaining provisions of RCW 80.36.150 authorize the commission's rulemaking authority over contracts and do not impose filing requirements except as required by the commission. The remaining provisions of WAC 480-80 provide definitions, informal and formal complaints, severability and special terms for government, school, and rural health care contracts. These provisions should not pose a regulatory barrier to the effective marketing of bundles.

Sufficiency of the Record

The Legislature set out specific conditions under which a petition for minimal regulation bundles shall be granted, defined the meaning of minimal regulation, and provided for additional waivers if the commission deems them no longer necessary to protect the public interest. In staff's opinion the intent of the law was not to impose a new and complex process, or to require an expansive record, but to allow reduced regulation for a specific set of service offerings. The petitions follow the statutory requirements and the petitioners have provided evidence of compliance. Similar to competitively classified services, the commission may at any time require the petitioners to provide all data it deems necessary to implement the law, and the petitioners

must at a minimum continue to keep their books, file reports, and cooperate in investigations as required by law and rule.

Conclusion

The Legislature enacted statutory changes in 2007 that allow for significant relaxation of regulations applicable to bundles of telecommunications services, so long as certain conditions are met. With the exceptions noted above these petitions are narrowly crafted to satisfy the statute without harming the public interest.

Staff recommends granting the petitions in part, with certain exceptions necessary to protect consumers and the public interest as described in Staff's Attachment A.

Attachment A

Disposition of Regulatory Requirements Identified by Petitioners as Inapplicable to Bundles

Section, Subsection	Subject	Disposition
RCW 80-36-100	Tariff schedules to be filed and open to public	Inapplicable
RCW 80-36-110	Tariff changes	Inapplicable
RCW 80.36.150	Contracts	
(1)-(4)	Contracts	Applicable
(5)	requires that competitive and noncompetitive services be unbundled	Inapplicable
WAC 480-80	Tariffs	
-010	Application of Rules	Inapplicable
-015	Exemptions from rules	Inapplicable
-101 through 134	Tariff filing requirements, rejection, promotions, etc.	Inapplicable
-141	Service contract	Applicable
WAC 480-80-142 (1), (7)	Individual filing requirement & retail restrictions	Inapplicable
WAC 480-80-143	Special contracts for gas & electric companies	Inapplicable
WAC 480-120-103(1)(a)	Application for service	Inapplicable
WAC 480-120-161	Form of Bills	
(4)(a)	Bill organization	Applicable
(b)	Name of each provider	Inapplicable
(c)	Charges itemized by provider	Inapplicable
(d)	Change in service provider	Inapplicable
(e)	Web address of tariff	Inapplicable
(5)	Descriptions of billed charges	Inapplicable
(6)	Charges for which service can be discontinued	Inapplicable
(7)(a)	Rates for individual services	Inapplicable
(7)(b)	“calculations of any credit or other account adjustment” applicable	Applicable in part
(7)(c)	Name & address of information service providers	Inapplicable
(8) through (10)	Methods of payment, Billing Companies, Crediting customer payments	Applicable
(11)	Exemptions	Inapplicable