

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

COMCAST PHONE OF
WASHINGTON, LLC

Application for Mitigation of Penalties
or for Stay

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In the Matter of

COMCAST PHONE OF
WASHINGTON, LLC

Petition for an Interpretive and Policy
Statement or Declaratory Ruling

DOCKET NOS. UT-031459 and
UT-031626

COMMISSION STAFF'S
ANSWER TO PETITIONS FOR
ADMINISTRATIVE REVIEW

1 The Washington Utilities and Transportation Commission (Commission) Staff (Staff) files this answer to the Petitions for Administrative Review filed by Comcast Phone of Washington, LLC (Comcast Phone) and AT&T Communications of the Pacific Northwest, Inc. (AT&T). As stated below, the Commission should deny the petitions for administrative review.

I. ARGUMENT

A. Comcast Phone's and AT&T's Argument that the Initial Order Erroneously Interprets WAC 480-120-439 Is Unavailing

2 Comcast Phone contends that the Administrative Law Judge (ALJ) erred in concluding that WAC 480-120-439 applies to CLECs that serve more than two percent of the access lines in Washington. Comcast Phone's Petition, at 1-5 (citing Conclusion of Law, No. 2). AT&T also challenges this conclusion, but does not enumerate the conclusion(s) of law it challenges. Staff responds to their arguments collectively.

3 In their petitions for administrative review, Comcast Phone and AT&T essentially repeat the arguments they made in their motions for summary determination. They contend that a CLEC, regardless of the number of access lines it may serve, is exempt from the requirements of WAC 480-120-439. Not one of their arguments in support of this contention has merit.

4 Comcast Phone and AT&T argue that the ALJ failed to "ascertain and give effect to the Legislature's intent" in concluding that CLECs are Class A companies as defined in WAC 480-129-021. *See* Comcast Phone Petition, at 2-3; AT&T's Petition, ¶¶ 5-8.¹

However, as argued briefly below, and more fully in Staff's motion for summary

¹ AT&T appears to argue that the Commission Staff's position in this case is contrary to Executive Order 97-02. AT&T's Petition, ¶ 9. It is not clear what point AT&T would like the Commission to take from its reference to the Executive Order. In Executive Order 97-02, the Governor directed agencies to review their rules against certain criteria. AT&T does not cite to any deficiencies in the Commission's rulemaking record.

determination and responses to motions for summary determination, which are incorporated by this reference, Comcast Phone's and AT&T's legislative intent argument is logically flawed.

5 Nothing in RCW 80.04.530 supports Comcast Phone or AT&T. This statute exempts small local exchange companies from complying with certain regulatory requirements. The Legislature enacted this statute in 1995, so if it had intended to exempt competitive companies from the statutes enumerated in RCW 80.04.530, it easily could have exempted competitively classified companies. Instead, the Commission retained RCW 80.36.310 and .320 as the statutes directed to the regulation of competitive companies. The Legislature gave the Commission the discretion to decide what regulatory requirements should be waived for competitively classified companies.²

6 Importantly, RCW 80.04.530 is not directed at Class A or Class B companies. It applies to local exchange companies, which include both CLECs and ILECs. In its rules, the Commission defined Class A and Class B companies in accordance with the number of access lines served. The Commission's definition of Class A and Class B companies complements, rather than conflicts with, RCW 80.04.530.

² The Commission waives the requirements of RCW 80.04.300 through .330, and except for RCW 80.08.140, the requirements of chapters 80.08, 80.12, and 80.16 RCW for competitively classified companies. See WAC 480-121-063.

7 The fact that the Commission had not applied *former* RCW 480-120-535 to CLECs
does not mean that the Commission could not have done so. A simple explanation for
this (to the extent one is necessary) is that up until recently there may not have been a
CLEC that served over two percent of access lines.

8 Likewise, there is no break in regulatory policy in requiring large CLECs to file
service quality reports. CLECs serving more than 50,000 access lines were required to
file service quality reports pursuant to *former* WAC 480-120-535.³

9 Comcast Phone’s argument that “Class A company” must exclude CLECs in
order to be consistent with chapter 480-120 WAC is wrong. “Class A company” is
defined in WAC 480-120-021 to include all companies serving more than two percent of
the access lines in Washington. Therefore, the initial Order is wholly consistent with
the rule.

**B. The Initial Order Properly Declined to Grant Comcast Phone and Other
CLECs a Blanket Exemption from WAC 480-120-439.**

10 Finally, the ALJ properly declined to grant Comcast Phone and other CLECs a
blanket waiver of WAC 480-120-439. Contrary to Comcast Phone’s argument, the ALJ
addressed Comcast Phone’s request for an alternative remedy by denying it on the
present record, without prejudice. Initial Order, ¶¶ 33-35.

³ For the reasons set forth in Staff’s Response to Motions for Summary Determination, ¶ 7,
Comcast Phone’s argument that *former* WAC 480-120-535 could not have applied to CLECs because it was
enacted before the emergence of CLECs in the market is not compelling. *See* Comcast Phone’s Petition,
at 4.

II. CONCLUSION

11 For the reasons set forth herein, and in Staff's motion for summary determination and response to motions for summary determination, the Commission should deny Comcast Phone's and AT&T's petitions for administrative review.

Dated: February 17, 2004.

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