

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

COMCAST PHONE OF  
WASHINGTON, LLC

Application for Mitigation of Penalties  
or for Stay

DOCKET NO. UT-031459

COMMISSION STAFF'S  
RESPONSE TO COMCAST  
PHONE'S APPLICATION FOR  
MITIGATION OF PENALTIES  
OR FOR STAY

1 Pursuant to the Washington Utilities and Transportation Commission's  
(Commission) Notice dated October 8, 2003, the Commission Staff (Staff) submits this  
response to Comcast Phone of Washington, LLC's (Comcast Phone) Application for  
Mitigation of Penalties.

**A. Process**

2 As set forth below, Staff disagrees with Comcast Phone's interpretation of WAC  
480-120-439 and its arguments supporting its application for mitigation or stay.  
Therefore, it is appropriate for the Commission to set this matter for hearing to  
determine whether the Commission should mitigate the penalty. Staff believes that this  
matter is best resolved as a brief adjudicative proceeding.

**B. The Commission Should Not Mitigate the Penalty Because Comcast Phone's Interpretation of "Class A Company" Is Untenable**

3 Comcast Phone argues that the Commission should mitigate the penalty because Comcast Phone acted in good faith in its interpretation of WAC 480-120-439. Petition, at 2. As argued below, the Commission should not mitigate the penalty against Comcast Phone because WAC 480-120-439 plainly applies to all telecommunications companies that have more than two percent of the access lines in Washington. Comcast Phone's interpretation of WAC 480-120-439 is untenable and its position cannot be labeled as a good faith misinterpretation of the rule.

4 The Commission's service quality reporting rule, WAC 480-120-439, requires Class A companies to submit monthly reports detailing their compliance with the Commission's service quality rules. The reporting requirements set forth in WAC 480-120-439 are expressly tied to the service quality rules. WAC 480-120-439 applies to "Class A" companies.

5 A "Class A" company is defined as "a local exchange company with two percent or more of the access lines within the state of Washington." WAC 480-120-021. This definition does not exempt CLECs or competitively classified companies. A "competitively classified company" is separately defined as "a company that is classified as competitive by the commission pursuant to RCW 80.36.320." *Id.*

6           The Commission’s rules governing telecommunications companies apply to all telecommunications companies that are subject to the Commission’s jurisdiction. WAC 480-120-011(1) (“The rules in this chapter apply to any company that is subject to the jurisdiction of the commission as to rates and services under the provisions of RCW 80.01.040 and chapters 80.04 and 80.36 RCW.”). This rule is consistent with the Commission’s statutory authority over all telecommunications companies providing service in Washington. *See* RCW 80.01.040(3); 80.36.320.

7           Washington law exempts companies with fewer than two percent of access lines in Washington from many of the requirements of Title 80 RCW, including all of the financial reporting requirements set forth in RCW 80.04.300 through 80.04.330. However, there is no blanket exemption for CLECs or competitively classified companies that serve more than two percent of access lines. With respect to competitively classified companies, the Commission may waive regulatory requirements if it determines that competition will serve the same purposes as regulation. RCW 80.36.320(2). Nothing in Title 80 requires the Commission to waive the service quality reporting requirements for competitively classified companies or CLECs that serve more than two percent of access lines within the State.

8 Comcast Phone contends that a CLEC cannot be a Class A company. *See* Petition, at 2. The plain language of WAC 480-120-021 defining “Class A company” refutes Comcast Phone’s contention.

9 Comcast Phone also argues that the distinction between Class A and Class B companies in WAC 480-120 “parallels” FCC accounting rules. Petition, at 3-4. Comcast Phone is wrong. WAC 480-120-021 defines Class A and Class B telecommunications companies as those terms are used in WAC 480-120. The FCC’s accounting rules are of no help in deciding the meaning of “Class A company” in WAC 480-120-439. As used in all of WAC 480-120, a “Class A company” is one that serves more than two percent of the access lines within Washington.

10 WAC 480-120-439 requires all Class A companies to file reports with the Commission regarding their compliance with certain of the Commission’s service quality rules. Except where competitively classified companies are expressly exempted, the service quality rules referenced in WAC 480-120-439 apply to all local exchange companies, including CLECs and competitively classified companies. The service quality rules to which the reporting requirements apply are:

- Missed appointments: Class A companies must report whether they completed service orders within the timelines set forth in WAC 480-120-105 and 480-120-112. These rules apply to all local exchange companies; however, competitively classified companies are exempt from the requirements in WAC 480-120-105(1)(a) and (b).

- Installation or activation of basic service: Class A companies must report, by central office, the total number of orders taken in a month and the number of orders the company was unable to complete within the timeframes set forth in WAC 480-120-105. WAC 480-120-105 does not exempt CLECs or competitively classified companies from its requirements.
- Summary trouble reports: Class A companies must submit a report summarizing the trouble reports at each central office, including the number of lines served by the central office. The report must include an explanation of causes when the number of reports exceeds the standards set forth in WAC 480-120-438. WAC 480-120-438 does not exempt CLECs or competitively classified companies from its requirements.
- Switching report: Class A companies must report switching problems that exceed the minimum service quality standard for switches set forth in WAC 480-120-401(2)(a). WAC 480-120-401 applies to local exchange companies. It does not exempt CLECs or competitively classified companies from its requirements.
- Interoffice, intercompany and interexchange trunk blocking report: Class A companies must report trunk blocking in excess of the standards set forth in WAC 480-120-401(3) and (5) and the steps taken to relieve the blockage. WAC 480-120-401 applies to all local exchange companies and does not exempt CLECs or competitively classified companies.
- Business office and repair answering system reports: If requested, Class A companies must report compliance with WAC 480-120-133, which requires companies to answer calls to their business or repair centers during regular business hours, within a specified, average period of time. This rule applies to all local exchange companies and does not exempt CLECs or competitively classified companies.
- Repair report: Class A companies must report the number of service interruptions and the number repaired within 48 hours, and the number not repaired within 48 hours as required by WAC 480-120-440. Companies also must report the service impairments and the number repaired within 72 hours, and the number not repaired within 72 hours as

required by WAC 480-120-440. WAC 480-120-440 applies to CLECs and competitively classified companies.

Therefore, contrary to Comcast Phone's arguments, nothing in WAC 480-120-439 or any of the rules referenced therein give any indication that CLECs or competitively classified companies serving more than two percent of access lines are exempt from their requirements.

11           Rather than look to the express requirements of WAC 480-120-439 and the related service quality rules, Comcast Phone looks to unrelated rules to support its argument that WAC 480-120-439 does not apply to competitively classified companies or CLECs. The fact that 480-120-071(4)(b)(i) refers to Class A companies that have a service-extension tariff sheds no light on the meaning of "Class A company" as that term is used in WAC 480-120-439. In fact, the reference to WAC 480-120-071 undercuts Comcast Phone's argument because that rule refers to the whole of Class A companies, and exempts those with a service-extension tariff.

12           Comcast Phone also contends that, "if the Commission would have wanted WAC 480-120-439 to apply to CLECs, it would have said so." Petition, at 4. That is precisely what the Commission did by defining Class A companies as all local exchange companies serving more than two percent of access lines and requiring those companies to comply with WAC 480-120-439. As with other rules, had the Commission intended to exempt CLECs or competitively classified companies, it expressly would have done

so. *See, e.g.*, WAC 480-120-105(4)(exempting competitively classified companies from certain access line installation or activation requirements); 480-120-540(5)(exempting small businesses or competitively classified companies from terminating access charge requirement if they concur in a tariff filed by another local exchange company). In addition, the Commission does not waive the service quality rules upon granting a petition for competitive classification. WAC 480-121-063 (listing regulatory requirements that are waived for competitively classified companies).

13 Comcast Phone also argues that its interpretation of “Class A” is reasonable given the history of the “Class A label.” However, Comcast Phone’s interpretation is unreasonable given the unequivocal definition of “Class A company” set forth in WAC 480-120-021.

14 Try as it might, Comcast Phone cannot make a plausible argument that “Class A company” necessarily excludes CLECs or competitively classified companies. Therefore, the Commission should not mitigate the penalty.

### **C. The Commission Offered Comcast Phone Technical Assistance**

15 Comcast Phone argues that the Commission should mitigate the penalty because the Commission failed to assist the company in meeting its obligations under WAC 480-120-439. This argument is without merit.

16 Staff agrees with Comcast Phone that the parties tried to resolve Comcast Phone's reporting requirement issue prior to the time the Commission issued the penalty. Staff alerted Comcast Phone of the need to report as soon as Staff became aware of the company's access line court, and it responded promptly and proactively to every question and issue raised by Comcast Phone. To the extent Comcast Phone was dissatisfied with this information, there was sufficient time for Comcast Phone to seek formal clarification before the initial report was due on September 2, 2003.

17 The issue of whether the reporting requirements of WAC 480-120-439 apply to CLECs or competitively classified companies is not one that lends itself to technical assistance. *See generally* chapter 43.05 RCW. This is a matter of law, and as argued above, the rule applies to all local exchange companies serving more than two percent of access lines.

18 Whether Comcast Phone serves more than two percent of access lines is a factual question. The Commission offered Comcast Phone assistance in answering this question. The Commission informed Comcast Phone in an e-mail dated July 17, 2003, that Comcast Phone served more than two percent of access lines and that the company was required to comply with WAC 480-120-439. *Weaver, Decl.*, ¶ 4 & Attachment A.



Therefore, as of July 17, 2003, Comcast Phone was on notice that it apparently is a Class A company.<sup>1</sup>

19 Comcast Phone apparently disputed the total number of access lines from which Staff devised the two percent figure. *See id.*, ¶ 5. Comcast Phone then requested from Staff the data necessary to obtain the total number of access lines in the state. Under WAC 480-120-302, a company may request information from the Commission's Record Center regarding the total number of access lines.<sup>2</sup>

20 The Commission offered to compile the total number of access lines in order to assist Comcast Phone, even though the Commission's rules do not provided for the agency to compile that data on behalf of companies. *Id.*, Attachment B.<sup>3</sup> In the meantime, the Commission informed Comcast Phone that the company could use numbers from the Department of Revenue in order to assist it in determining whether it is a Class A company. According to the Department of Revenue numbers, accompany

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<sup>1</sup> It appears that Comcast Phone's access line count first exceeded the two percent threshold at some point in 2002, at which point the company should have begun reporting service quality performance under the rule that preceded WAC 480-120-439. The former rule did not use the term "Class A" that Comcast now relies upon as the basis for its argument that the rule does not apply to CLECs or competitively classified companies.

<sup>2</sup> WAC 480-120-302(1) instructs companies wishing to conduct their own calculation of the total number of access lines to obtain the raw data from the Commission's Records Center.

<sup>3</sup> Comcast Phone contends that Commission Staff has the raw data "readily available but has refused to provide it." Application, at 8. Comcast Phone has no evidence of this alleged refusal. The rule Comcast Phone cites provides, "For purpose of this rule the raw data may be requested from the commission's record center in order *for the company seeking the data to generate its own calculation* subsequent, and pursuant, to this rule. WAC 480-120-302(1)(c) (emphasis added). Comcast has not said whether it made this request of the Records Center.

serving at least 68,252 access lines would be a Class A company. Comcast serves over 100,000 access lines. *Id.*, Attachment A.

21 Comcast Phone responded to this request by saying that it would request the data from the Records Center, but it is unclear whether Comcast Phone made that request. *Id.*

22 Staff later informed Comcast Phone that according to FCC records, there were 3,960,744 access lines in Washington, which would make a company serving 79,215 access lines a Class A company. *Id.* Attachment C. Comcast Phone serves over 100,000 access lines in Washington. *Id.* Attachment A.

23 Plainly, Staff informed Comcast Phone that of its belief that Comcast Phone serves over two percent of access lines and that it must comply with the reporting requirements of WAC 480-120-439. If Comcast Phone disputes that determination, Comcast Phone has the right to conduct a line count and demonstrate that it does not serve two percent of the access lines within the State. However, Comcast Phone cannot claim that Staff failed to assist it in meeting its legal obligation.

#### **D. The Commission Properly Imposed the Penalty**

24 Comcast Phone contends that the Commission should have waited to assess a penalty until after the company had an opportunity to file a request for an interpretive and policy statement. However, Comcast filed its request on October 2, 2003, several

months after Staff repeatedly informed Comcast of its obligation to comply with WAC 480-120-439. This is no reason for the Commission to mitigate the penalty.

25 Comcast Phone argues that the Commission should not have penalized it, because the penalty does not follow the Commission's decision in *MCI Metro Access Transmission Services, Inc. v. US West Communications Inc.*, Docket No. UT-971063. In its order in that case, the Commission declined to impose penalties against US West for its failure to provide MCI Metro with timely, adequate, sufficient, efficient, and non-discriminatory interconnection. That case was a very complex case, and the Commission decided that under the circumstances of that case, it would not impose penalties against US West.

26 Unlike the *MCI Metro* case, this case is not at all complicated—WAC 480-120-439 unequivocally requires Comcast Phone to file service quality reports. Comcast Phone has failed to comply with the rule.

27 There is nothing new about reporting requirements being different for smaller companies. While WAC 480-120-439 is a new rule, Comcast Phone was required to comply with the old rule, as well. Therefore, this is not a matter of first impression.

28 Also, Comcast Phone should have known its conduct was in violation of the rule because the Commission had informed the company that it was required to report. A

plain reading of WAC 480-120-439 and 480-120-021 also put the company on notice of its obligation.

**E. The Commission Should Not Stay the Penalty**

29 The Commission should not stay the penalty assessment pending the outcome of the Petition for Interpretive and Policy Statement or Declaratory Ruling. Comcast Phone has requested a stay of the penalty, but has not provided any reason for staying the penalty, other than to argue that as a CLEC, Comcast Phone falls outside the definition of "Class A company." As set forth above, Comcast Phone's interpretation of "Class A company" is unreasonable. At bottom, Comcast Phone's request to stay the penalty is based on the fact that it simply disagrees with the rationale for the penalty. The Commission does not stay penalties simply because a company may disagree with a penalty. The penalty is not excessive and Comcast Phone has not provided any evidence that payment of the penalty will cause a hardship to the company. Therefore, the Commission should not stay the penalty.

Dated: October 20, 2003.

Respectfully submitted,

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