

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of Adopting)	
WAC 480-120-083)	DOCKET NO. UT-010558
)	
Relating to)	GENERAL ORDER NO. R-490
Cessation of Certain)	
Telecommunications Services)	ORDER ADOPTING IDENTICAL
.....)	RULE ON AN EMERGENCY BASIS

1 This is an emergency rulemaking proceeding to adopt a rule that will become effective when filed. This emergency rule addresses the cessation of certain telecommunications services and provides for notice to customers whose service will cease, and notice to the Commission, to other telecommunications companies, and to the State 911 Program. The Commission first adopted an emergency rule addressing this topic on May 10, 2001. That rule will expire on September 8, 2001. The Commission has filed at WSR 01-18-098 a proposed permanent rule to address the needs satisfied by the emergency rule. This order adopts an identical rule that will replace the first emergency rule to protect the public health, safety and general welfare until a permanent rule is adopted.

2 The Washington Utilities and Transportation Commission is conducting this rulemaking pursuant to RCW 80.01.040 and RCW 34.05.350. This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), and the State Environmental Policy Act of 1971 (chapter 43.21C RCW).

3 While the emergency rule process set forth in RCW 34.05.350 permits agencies to dispense with the requirements of notice and opportunity to comment, the Commission did provide notice of its consideration of this rule, and did receive and consider written and oral comments on the proposal.¹

¹ Commission Staff's Open Meeting Memoranda dated May 9, 2001, and August 29, 2001 set out a substantial record of notice and comment for the - times during which this emergency rule and its predecessor were under consideration. Many of the suggestions made by interested persons were incorporated into the adopted rule.

- 4 The Commission designates the discussion in this order as a concise explanatory statement,² supplemented where not inconsistent by the Commission Staff memoranda presented at the open meetings³ where the Commission considered whether to adopt an emergency rule.
- 5 The purpose of this rule is to preserve access to emergency services by preserving telecommunications access to emergency services through the state's 911 program. The rule requires that Companies intending to cease local exchange service, private branch exchange service (PBX), Centrex service, and private line service give 30 days' notice to customers, the Commission, other telecommunications companies, and the State 911 Program that certain telecommunications services will cease. The notice will afford customers an opportunity to seek a new telecommunications service provider before access to 911 is lost when service ceases. The notice to telecommunications companies that are customers of the company ceasing service will afford those telecommunications companies the same opportunity to make necessary alternative arrangements. This notice to other telecommunications companies is necessary to protect the services provided to the customers of those companies, some of which services may include local exchange, PBX and Centrex services.
- 6 The facts requiring emergency action, and the readoption of WAC 480-120-083 on an emergency basis, are as follows:
- 7 The Commission is charged with ensuring that basic telephone service is universally available, including voice grade access to the public switched network and access to emergency services. RCW 80.36.600(6)(b). The Commission is also responsible for ensuring that residential and business telephone subscribers have access to enhanced 911 services. RCW 80.36.555, 560.⁴
- 8 The Commission has determined that cessation of local exchange service, PBX, Centrex service, and private line service, without notice to customers, would prevent customers from locating alternative providers for these services prior to cessation and therefore would result in the loss of access to 911 services for some period of time. The Commission, through its routine adjudication of telecommunications issues, rulemaking, and other activities related to telecommunications, is aware that initiating

² A concise explanatory statement as provided for in RCW 34.05.325 is not required in emergency rulemakings. Because of the level of interest in this rule and the public involvement, the Commission believes that it is appropriate to acknowledge the involvement by describing in a concise explanatory statement how comments affected the development of the rule.

³ April 25, 2001, - May 9, 2001, and August 29, 2001.

⁴ The Legislature has also required a statewide program of enhanced 911 services. RCW 38.52.500.

new service to a customer can take days, and sometimes weeks, depending on the complexity of the needed service.⁵

- 9 The Commission has also determined that an immediate threat of abrupt losses of access to 911 service exists. This determination is based on (1) recent abrupt cessations of services in this and other jurisdictions; (2) prior market exits by companies formerly providing service in Washington; (3) recent inquiries from companies considering the cessation of service and attempting to ascertain Commission requirements for such cessation; and (4) the substantial recent changes in the capital market for telecommunications companies that has put many companies at risk of closure. (These circumstances are addressed in detail in the Commission Staff Open Meeting memoranda on this subject, on which the Commission bases these findings.) The extent of the risk is substantial and immediate; more than 250,000 businesses, and a smaller number of residences, are served by competitive companies that may fall victim to rapidly changing capital markets.
- 10 The Commission in this rule protects local exchange service, PBX service, and Centrex as three of the four services for which cessation requires notice. These services provide customers with dial-tone access to 911 services and provide automatic number identification (ANI) and automatic location identification (ALI) that allow 911 emergency centers to direct emergency personnel to the location of an emergency.
- 11 Private line service is included as the fourth service protected by this emergency rule because Public Safety Answering Points (PSAPs—the county and city emergency dispatch centers that receive calls to 911) use private line service to receive and route calls, and use them to access ALI data bases.⁶ Private line services are also used by hospitals and other emergency services.
- 12 There are no services that could substitute for access to 911 and thereby reduce an emergency to an inconvenience. Wireless communication, for example, does not provide a PSAP with ALI information. Also, wireless communication depends upon private lines that connect cell towers with the public switched telephone network. Access by all affected customers to wireless communications would not substitute for the telecommunications services that, if terminated without notice, would result in the loss of access to 911.

⁵ See Dockets UT-950200, UT-991358, UT-003013, UT-003120, UT-013019, and WAC 480-120-051, which permits local exchange companies up to five days to connect the simplest business and residence service.

⁶ See Letter from Robert G. Oening, State 911 Administrator, quoted in the Open Meeting Memo for May 9, 2001.

- 13 The Commission Staff memoranda of April 25, 2001, and May 9, 2001, described twelve recent circumstances in which an actual cessation of telecommunications services, or a risk of such cessation, were brought to the Commission's attention. The Commission Staff memorandum of August 29, 2001, indicates that thirty-three telecommunications companies in Washington have filed to cease doing business in 2001. These factual circumstances have brought to the forefront both the risk to citizens of Washington of losing their telecommunications service, and the need for Commission rules ensuring access to continued connection of citizens to the services required in emergency situations. Furthermore, the circumstances that required the initial adoption of WAC 480-120-083 are continuing and require that an identical rule be adopted on an emergency basis. The Commission has been studying these concerns in a permanent rulemaking, which is now in progress and which the Commission anticipates will result in adoption of a permanent rule on this topic. This emergency rule is designed to govern those situations posing an immediate risk of harm, only until such time as a permanent rule may be developed and adopted.
- 14 The Commission filed a Notice of Proposed Rulemaking (CR-102) on September 5, 2001, under WSR # 01-18-098 to adopt the provisions of the rule, together with additional provisions, on a permanent basis. This filing demonstrates the Commission's intention to adopt a permanent rule regarding cessation of telecommunications services. The Commission has observed, and will continue to observe, the full requirements of notice and opportunity to comment upon adoption of a permanent rule in that rulemaking. The Commission provided notice to industry of this proposal, received written and oral comments, and used those comments to develop the first emergency rule, which it readopts by this order. Interested persons have had a reasonable opportunity to comment and participate in the development of the rule.
- 15 Because access to 911 service may be lost as a result of termination without notice of certain telecommunications services, the Commission determines that an emergency exists and that adoption of an emergency rule is necessary for the preservation of the public health, safety, or general welfare.⁷
- 16 The Washington Utilities and Transportation Commission finds that an emergency exists. The Commission finds that immediate adoption of a new rule regarding cessation of telecommunications services is necessary. The Commission is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. When adopted that rule will replace this emergency rule.

⁷ See May 9, 2001, Open Meeting Memo, n.2, and August 29, 2001 Open Meeting Memo.

ORDER

- 17 THE COMMISSION ORDERS That WAC 480-120-083, as set forth in Appendix A, is readopted to take effect as an emergency rule of the Washington Utilities and Transportation Commission pursuant to RCW 34.05.350 and RCW 34.05.380(2), to be effective when filed.
- 18 THE COMMISSION FURTHER ORDERS That this Order and the rule set forth in Appendix A, after being first recorded in the order register of the Washington Utilities and Transportation Commission, be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this th day of September, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner