

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RE: Rules relating to Commission General)
- Tariffs: Chapter 480-80 WAC) Docket No. U-991301
_____)

COMMENTS OF THE
ASSOCIATION OF COMMUNICATIONS ENTERPRISES

The Association of Communications Enterprises (“ASCENT”, formerly the Telecommunications Resellers Association,¹ on behalf of its members and pursuant to the Washington Utilities and Transportation Commission’s (“Commission”) October 2, 2000 *Notice of Opportunity to File Written Comments* (“Notice”) in the above-captioned proceeding, submits comments addressing the proposed Price List and Contract Rules appearing as Attachment B to the Commission’s Notice. With minor amendment and clarification, as addressed herein, ASCENT believes that the Commission’s proposed price list and contract rules are consistent with the Commission’s and State’s efforts to streamline regulation for competitive entities, and should be adopted.

ASCENT has supported the Commission’s efforts to move toward a more streamlined process for submission of price lists from competitively classified companies in this proceeding since its inception.² The Commission’s proposed price list and contract rules offer a simple clear cut method for the submission price lists and tariffs by competitively

¹ A national industry association, ASCENT represents more than 750 entities engaged in, or providing products and services in support of, the provision of telecommunications services, primarily on a resold basis. ASCENT was created, and carries a continuing mandate, to foster and promote telecommunications resale, to support the telecommunications resale industry, and to protect and further the interests of entities engaged in the resale of telecommunications services. ASCENT is the largest association of competitive carriers in the United States, numbering among its members not only the large majority of providers of domestic interexchange and international services, but the majority of competitive local exchange carriers.

² See generally, *Initial Comments of the Telecommunications Resellers Association*, Docket No. UT-991301 (October 9, 1999).

classified companies which accord reasonable flexibility while maintaining a process for competitive companies to establish their legal relationship with end users. ASCENT's concerns are relatively minor, yet no less important toward developing an effective price list rule that meets the needs of consumers, the Commission, and the competitive industry.

I. COMPANY WEB SITE ACCESS SHOULD BE REQUIRED ONLY BY COMPANIES WHO MAINTAIN WEB SITES.

The explosive increase in Internet usage, diving costs of web site development and hosting, and the ability to make large volumes easily accessible, make the Internet an ideal medium for consumers to gain access to company information. An ability for the public to gain access to information at any time and without the need for initial human intervention makes the Internet an ideal method for companies to keep their customers and prospective customers informed of services, pricing, and general company information. Nevertheless, despite the proliferation of the Internet, just as not all members of the public yet have Internet access, the Commission, through its rules, should not presume that all service providers necessarily have web sites.

Proposed rule WAC 480-80-X01(d) would make a web site address mandatory for all entities.³ Proposed rule WAC 480-80-X01(d)(5) would require all competitively classified companies to maintain a complete and current copy of price lists on a web site accessible to the general public. Although seemingly reasonable obligations on their face, particularly in light of the recent Federal Communications Commission's detariffing rules which requires carriers *that maintain web sites* to post rates,⁴ the

³ "The price list *must* state ... (d) A toll-free telephone number *and* web site address that customers can use to contact the company [emphasis supplied]."

⁴ *In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace*, 11 FCC Rcd. 20730, as amended, Order on Reconsideration, 12 FCC Rcd. 15034; Second Order on Reconsideration, 14 FCC Rcd. 6015. 47 C.F.R. §42.10(b). "In addition, a nondominant IXC *that maintains an Internet website* shall make such

Commission's rules, as proposed, obligate service providers to create a website or develop and upload additional information to an existing web site at additional effort and cost that is not insignificant.

As a practical matter, ASCENT agrees with the Commission that web access is an ideal method for consumers to obtain information about a carrier's services. The Association's concern has to do with the mandatory obligation to make such information available via the Internet, particularly in the absence of any evidence that all companies have established an Internet site of which such information could be posted. Also of concern is the lack of any evidence that companies, particularly those without web sites, could comply with mandatory web site posting obligations at a reasonable cost and in a manner that would allow companies to timely comply with the Commission's price list rules, when *immediate* compliance is presumed by the language. Notwithstanding that the rule does not envision how consumers would be informed of web addresses without company contact or company advertising, to the extent that company and pricing information can be provided to the public via more conventional methods, Internet access should not be made mandatory, and certainly should not be considered through this price list proceeding.

Clearly, the absence of a web site may be a competitive disadvantage for companies. But the decision to produce a web site and what to post on an existing web site should be left to the entity, and not be mandated by regulation. The Commission should alternatively amend WAC 480-80-X01(d) to accord company discretion in the use of a web site for posting rate information and allow the market to dictate the necessity of maintaining

make such rate and service information specified in paragraph (a) of this section available on-line at its Internet website in a timely and easily accessible manner, and shall update this information regularly [emphasis supplied]."

a website. So long as consumers retain an ability to contact the contact via toll free number or otherwise, consumers will be no more disadvantaged if companies are not required by rule to maintain web sites or post rate information.

WAC 480-80-X01(d) should be amended to allow for optional web site access if a web site is maintained by the company as follows: “(d) A toll-free telephone number and web site address, if maintained by the company, that customers can use to contact the company.” WAC 480-80-X01(5) should be amended to read “(5) Each competitively classified company maintaining a website must maintain a complete and current copy of its price list on a web site accessible to the general public using commonly available web browsing software.”

II. COMPETITIVELY CLASSIFIED COMPANY PRICE LISTS SHOULD BE PRESUMED EFFECTIVE ON ONE DAYS NOTICE TO THE COMMISSION.

Absent in the proposed rules is any indication of the effective date of competitively classified company price lists. No such provisions are necessary nor proposed by ASCENT. It should be understood, however, that because price lists are to be accepted by the Commission on a “file and use” basis pursuant to rule WAC 480-80-X01 (3), price lists should become effective on one days notice to the Commission, provided notice of price increases are provided to customers ten days before the effective date, pursuant to WAC 480-80-X01(6)(b)(ii).

With regard to the ten day rate increase requirements, and in light of the Commission’s commendable move toward a maximum rate option for price lists, the Commission should consider applying WAC 480-80-X01(6)(b)(ii) *only* if the company’s maximum price listed rate is exceeded. It is in a company’s own self interest to keep

customers informed of rate changes. Companies who would attempt to obfuscate rate changes to customers would risk an exodus of angry customers if rates were unilaterally increased without notice. In light of growing competitive pressure to keep rates low and a declining cost structure for telecommunications companies, reliance on rate change notices should again be left to discretion of individual carriers.

ASCENT does not advocate abandonment of notice requirements altogether. Rather, ASCENT proposes that the ten day minimum notice requirement not apply if rate changes are held within the minimum rates established in the company's price list by amendment of WAC 480-80-X01(6)(b)(ii) as follows: "(ii) Give direct notice to the customer of any price increase which exceeds the maximum price for any service at least ten days before it becomes effective."

III. COMPANIES WHICH ARE NOT COMPETITIVELY CLASSIFIED BUT WHOSE SERVICES ARE CLASSIFIED AS COMPETITIVE SHOULD BE REQUIRED TO FILE ACTUAL PRICES TO ENABLE COMPETITORS AND THE COMMISSION TO ENSURE COMPLIANCE WITH SECTIONS 251 AND 252 OF THE 1996 TELECOMMUNICATIONS ACT.

WAC 480-80-X03(b) accords companies who are not classified as competitive but who offer competitively classified services the option of including in price lists the actual price, or maximum and minimum prices, for services offered. Because of the reliance that non-facilities-based companies will continue to have on incumbent local exchange carriers for resale of local exchange services pursuant to sections 251(c)(4) and 252(d)(3) of the Telecommunications Act of 1996,⁵ the listing of rate *minima* and *maxima* should not be allowed. Dominant incumbent local exchange carriers should be required to

⁵ 47 U.S.C. §§251(c)(4) and 252(d)(3).

list only actual rates. In so doing, competitors and the Commission will be able to verify that wholesale discounts for competitively classified retail services offered by Qwest and GTE (Verizon) will be correct. Otherwise, incumbents will gain an opportunity to obfuscate the actual retail rate and may inadvertently gain the opportunity to engage in pricing discrimination between CLECs (and possibly the incumbent's own affiliates), while making it even more challenging to determine whether the incumbents are indeed complying with their statutory wholesale resale pricing obligations.

To eliminate any potential for non-competitively classified incumbents who file price lists for competitively classified services to engage in anti-competitive behavior or a pricing shell game, the optional inclusion of maximum and minimum prices in WAC 480-80-X03(b) should be eliminated.

IV. CONCLUSION

The proposed price list and contract rules are consistent with the Commission's and Washington's broader efforts to streamline rules, especially as the telecommunications industry continues a transition into a fully competitive environment. As the transition to a competitive environment is not yet complete, as is the transition to a Internet access, the proposed rules should be amended to take an interim step in 1) not making Internet posting mandatory for companies which do not currently maintain web sites, deferring to market pressure to compel companies to develop web sites; and 2) requiring dominant incumbent carriers to list actual prices for competitively classified retail services. These amendments, coupled with the presumed tariff effective day upon one days notice to the Commission, will achieve the Commission's intended objectives without compromising either consumer protection, Commission oversight, or the Commission's pro-competitive

policies.

Respectfully submitted this 20th day of October, 2000

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