

Chapter 480-121

REGISTRATION, COMPETITIVE CLASSIFICATION, AND INITIAL PRICE LISTS OF TELECOMMUNICATIONS COMPANIES

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Chapter 480-121 WAC

REGISTRATION, COMPETITIVE CLASSIFICATION, AND INITIAL PRICE LISTS OF TELECOMMUNICATIONS COMPANIES

WAC

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38 **WAC 480-121-011 Application of rules.**

39 (1) The rules in this chapter apply to any telecommunications company that is subject to
40 the jurisdiction of the commission as to rates and services under the provisions of RCW
41 80.04.010 and chapter 80.36 RCW.

42 (2) The price list provisions filed by the telecommunications company must
43 conform with these rules. If the commission accepts a price list that conflicts with these
44 rules, the acceptance does not constitute a waiver of these rules unless the commission
45 specifically approves the variation consistent with WAC 480-121-015. Price lists that
46 conflict with these rules without approval are superseded by these rules.

47 (3) Any affected person may ask the commission to review the interpretation of
48 these rules by a telecommunications company or customer by posing an informal
49 complaint under WAC 480-09-150 (informal complaints) or by filing a formal complaint
50 under WAC 480-09-420 (pleadings and briefs--application for authority—protests).

51 (4) No deviation from these rules is permitted without written authorization by the
52 commission. Violations will be subject to penalties as provided by law.

53

54 ~~**WAC 480-121-010 Filing of registration application, competitive classification**~~
55 ~~**petition, and price list.**~~

56 ~~Applications, petitions, and price lists must be filed at the office of the commission in~~
57 ~~Olympia, Washington, by mail or in person. Applicants must submit a declaration~~
58 ~~signed and dated by applicant or its attorney certifying the accuracy of the application,~~
59 ~~petition, and price list. Applications, petitions, and price lists will be assigned a docket~~
60 ~~number. All additional exhibits and data thereafter filed, and correspondence in~~
61 ~~connection with the filing, should bear that docket number. Applications for registration,~~
62 ~~petitions for competitive classification, and price lists must be submitted at the same~~
63 ~~time. The applicant must file with the commission an original application, petition, and~~
64 ~~price list and any additional copies as the commission may require.~~

65

66 **WAC 480-121-015 Exemptions from rules in chapter 480-121 WAC.**

67 (1) The commission may grant an exemption from the provision of any rule in this
68 chapter, ~~when doing so is~~ if consistent with the public interest, the purposes underlying
69 regulation, and applicable statutes.

70 (2) To request a rule exemption, a person must file with the commission a written
71 request identifying the rule for which an exemption is sought, ~~and~~ giving a full
72 explanation of the reason for requesting the exemption ~~is requested~~.

73 (3) The commission will assign the request a docket number, ~~if needed~~ it does
74 not arise in an existing docket, and will schedule the request for consideration at one of
75 its regularly scheduled open meetings or, if appropriate under chapter 34.05 RCW, in an
76 adjudication. The commission will notify the person requesting the exemption, and
77 other interested persons, of the date of the hearing or open meeting when the
78 commission will consider the request.

79 (4) In determining whether to grant the request, the commission may consider
80 whether application of the rule would impose undue hardship on the petitioner, of a
81 degree or a kind different from hardship imposed on other similarly situated persons,
82 and whether the effect of applying the rule would be contrary to the purposes of the rule.

83 (45) The commission will enter an order granting or denying the request or
84 setting it for hearing, pursuant to chapter 480-09 WAC.

85

86 **WAC 480-121-016 Additional requirements.**

87 (1) These rules do not relieve any telecommunications company from any of its duties
88 and obligations under the laws of the state of Washington.

89 (2) The commission retains the authority to impose additional or different
90 requirements on any telecommunications company in appropriate circumstances,
91 consistent with the requirements of law.

92

93 **WAC 480-121-017 Severability**

94 If any provision of this chapter or its application to any person or circumstance is held
95 invalid, the remainder of the chapter or the application of the provision to other persons
96 or circumstances is not affected.

97

98 **WAC 480-121-018 Delivery of a filing.**

99 (1) The commission will accept an application, petition for competitive classification, and
100 initial price list filing delivered in person, by mail, fax, or (when procedures are in place)
101 electronic means. The commission will stamp a filing received on Saturdays, Sundays,
102 and state holidays, or after 5:00 p.m., Pacific time, as received on the next business
103 day.

104 (2) In person or by mail.

105 (a) In order to be deemed received on a given day, the commission records
106 center must receive an original and two copies of the filing by 5:00 p.m., Pacific time.

107 (b) A filing delivered by mail must be free from all charges for postage. The
108 commission records center will return any postage-due filing to the sender.

109 (3) Fax filing.

110 (a) The commission must receive an original and two copies of the filing the
111 following business day.

112 (b) The commission will use the date and time the fax filing is received and
113 printed at the records center as the official file date.

114 (c) The commission records center must receive a faxed filing in its entirety by
115 5:00 p.m., Pacific time, Monday through Friday, except on state holidays, to be
116 considered received on that business day.

117 (4) Electronic filing.

118 (a) An electronic filing must conform to commission procedures for electronic
119 filing.

120 (b) After accepting an electronic filing, the commission will return an electronic
121 mail message noting the receipt date.

122
123 **WAC 480-121-020 Requirements for applications for registration applications,**
124 **competitive classification petitions for competitive classification, and initial price**
125 **lists.**

126 (1) Applications for registration must:

127 (a) Must Be in the form prescribed by the commission;

128 (b) Must be filed with a petition for competitive classification of the registering
129 company and an initial price list;

130 (bc) Must Comply with the rules set forth in chapters 480-80 WAC and 480-120
131 WAC; and

132 (ed) Be accompanied by the applicant=s current balance sheet, latest annual
133 report, if any, and a description of the telecommunications service it intends to offer
134 Must be filed at the office of the commission in Olympia, Washington;

135 (e) Must include a declaration signed and dated by the applicant or its attorney
136 certifying the accuracy of the filing; and

137 (f) Will be assigned a docket number. All documents subsequently filed in the
138 matter must bear that docket number.

139 (2) Petitions for competitive classification must meet the requirements of WAC
140 480-120-023.

141 (3) Price lists must meet the requirements of WAC 480-120-027.

142 (42) As a condition to registration, with or without hearing, tThe commission may
143 require, with or without hearing, that an applicant for registration clearly show that:

144 (a) The applicant possesses adequate financial resources to provide the
145 proposed service;

146 (b) The applicant possesses adequate technical competence to provide the
147 proposed service; and

148 (c) The applicant is in eCompliance with all applicable federal, state, and local
149 telecommunications technical and business regulations.

150 (53) The commission may request that an applicant to provide information
151 regarding the applicant's regulatory performance in other states in which where it
152 operates.

153 (6) Applicants intending to collect customer prepayments must meet the
154 requirements of WAC 480-120-058.

155 (7) Applicants collecting customer deposits pursuant to WAC 480-120-056 may
156 be required to procure a bond or establish a federally insured interest-bearing trust
157 account.

158

159 ~~WAC 480-121-023 When a supplemental application is required.~~

160 Supplemental registration applications, competitive classification petitions, and price
161 lists are required if a telecommunications company intends to amend its registration to
162 include collecting deposits or providing alternate operator services, local exchange
163 services, or prepaid calling services.

164

165 ~~WAC 480-121-026 Rejectionng of registration application, competitive~~
166 ~~classification petition, and price list a filing.~~

167 Registration applications, competitive classification petitions, and price lists not in
168 substantial compliance with these rules and chapter 480-120 WAC will be rejected by
169 the commission and returned to the applicant.

170 The commission may reject any filing that does not comply with commission rules.

171

172 ~~WAC 480-121-030 Additional information.~~

173 The commission may require additional information to supplement the registration
174 application, competitive classification petition, and price list. Unless a different time is
175 specified, such information shall be provided within ten days of the written request.

176

177 ~~WAC 480-121-040 Granting or denial of denying petitions for registration.~~

178 (1) An application The commission secretary may grant an application for registration
179 may be granted without hearing upon a determination by when the application
180 commission that the application is consistent with the public interest, that the applicant
181 meets the requirements of this section and RCW 80.36.350 and that the applicant has
182 provided adequately for the protection of customer deposits or prepayments. is on a
183 form prescribed by the commission and contains the following:

184 (a) The name and address of the company; application may be set for hearing in
185 accordance with notice issued by the commission. If, after hearing, the commission
186 finds that registration is not consistent with the public interest, or

187 (b) that tThe name and address of its registered agent, if any; applicant does not
188 meet the requirements of RCW 80.36.350, or that customer deposits or prepayments
189 cannot be adequately protected, it will deny the application.

190 (c) The name, address, and title of each officer or director;

191 (d) The most current balance sheet;

192 (e) The latest annual report, if any; and

193 (f) A description of the telecommunications services it offers or intends to offer.

194 (2) The commission will may deny an application for registration submitted by an
195 alternate operator services provider if, after hearing, the commission finds that the
196 application is operator services offered by the company or the charges for those

197 ~~services are not consistent with the public convenience and advantage.~~ interest or that
198 the applicant:

199 (a) Failed to provide the information required by RCW 80.36.350;

200 (b) Failed to provide the performance bond described in RCW 80.36.350 and
201 WAC 480-120-058, if required;

202 (c) Does not possess adequate financial resources to provide the proposed
203 service; or

204 (d) Does not possess adequate technical competency to provide the proposed
205 service.

206 (3) The commission may deny an application for registration submitted by an
207 alternate operator services company if, after hearing, the commission finds that the
208 services or charges offered by the company are not consistent with the public
209 convenience and advantage.

210

211 ~~**WAC 480-121-050 Cancellations.**~~

212 ~~(1) A request to cancel registration as a telecommunications company must be~~
213 ~~submitted in writing to the commission.~~

214 ~~(2) Registered telecommunications companies collecting prepayments that cease~~
215 ~~operations must comply with WAC 480-120-058(10).~~

216 Note: Moved to 480-120-083

217

218 **WAC 480-121-060 Revocationking a of registration.**

219 (1) The commission may revoke a registration, after notice and opportunity for a
220 hearing, for good cause. Good cause includes, but is not limited to, failure to:

221 (1a) File an annual report;

222 (2b) Pay regulatory fees;

223 ~~(3) Comply with the requirements of WAC 480-120-058;~~

224 (4c) Provide adequate service;

225 (5d) Maintain correct contact information, including the telecommunications
226 company's current address and telephone number; or

227 ~~(6e) Comply with all applicable federal, state, and local telecommunications and~~
228 ~~business and technical regulations; or,~~

229 ~~(7) Comply with applicable federal, state, and local technical regulations imposed~~
230 ~~on the carrier.~~

231

232 **WAC 480-121- 061 Classification proceedings General requirements to classify a**
233 **telecommunications company as competitive or to classify a service provided by**
234 **a telecommunications company as competitive.**

235 ~~(1) Rules of practice and procedure applicable. The rules of practice and procedure~~
236 ~~before the commission, chapter 480-08 WAC, shall apply generally to proceedings to~~
237 ~~classify a telecommunications company as a competitive telecommunications company~~
238 ~~or a service as a competitive telecommunications service.~~

239 ~~(2) Initiation of classification proceedings. A telecommunications company shall~~
240 ~~initiate a requesting competitive classification proceeding by must filing a petition with~~
241 ~~the commission. The petition must state the effective date of the requested~~
242 ~~classification, which must be at least thirty days after the filing date. The commission~~
243 ~~may initiate a competitive classification proceeding on its own motion by order instituting~~
244 ~~investigation.~~

245 ~~(3) Notice to affected companies and public counsel. The commission shall~~
246 ~~serve a copy of the petition or its order upon all telecommunications companies which~~
247 ~~may be affected by the proceeding, and upon the public counsel section of the office of~~
248 ~~the attorney general. Service by the commission shall be made as provided in WAC~~
249 ~~480-08-060(4). Alternatively, the commission may direct petitioner to serve a copy of~~
250 ~~the petition upon such parties as the commission directs. Service by petitioner shall be~~
251 ~~made in accordance with WAC 480-08-060(3).~~

252 ~~(4) Notice to customers of classification proceeding. The commission may~~
253 ~~require a telecommunications company to give notice of the pendency of the~~
254 ~~classification proceeding. The commission shall determine the manner and distribution~~
255 ~~of notice.~~

256 ~~(5) Appearances and intervention. Any person desiring to participate in a~~
257 ~~competitive classification proceeding may petition to intervene as provided in WAC 480-~~
258 ~~08-070 480-09-430.~~

259 ~~(6) Commission may require appearance. (3) Additional parties. In any~~
260 ~~competitive classification proceeding the commission may require all regulated~~
261 ~~telecommunications companies potentially affected by the proceeding to appear as~~
262 ~~parties to determine ~~their~~ the proper classification of the affected companies.~~

263 ~~(7) Burden of proof. In any competitive classification proceeding, the~~
264 ~~telecommunications company shall ~~have~~ has the burden of demonstrating that the~~
265 ~~company or specific service(s) at issue are is subject to effective competition. ~~Effective~~~~
266 ~~~~competition means that customers of the service have reasonably available alternatives~~~~
267 ~~and that the service is not provided to a significant captive customer base. In~~
268 ~~determining whether a service is competitive, factors the commission shall consider~~
269 ~~include, but are not limited to:~~

270 ~~(a) The number and size of alternative providers of services;~~

271 ~~(b) The extent to which services are available from alternative providers in the~~
272 ~~relevant market;~~

273 (c) ~~The ability of alternative providers to make functionally equivalent or~~
274 ~~substitute services readily available at competitive rates, terms, and conditions; and~~

275 (d) ~~Other indicators of market power, which may include market share, growth in~~
276 ~~market share, ease of entry, and the affiliation of providers of services.~~

277 A telecommunications company will not be classified as competitive unless it
278 demonstrates that the telecommunications services it offers are subject to effective
279 competition.

280 (5) Effective competition. Effective competition means that customers of the
281 service(s) have reasonably available alternatives and that the company does not have a
282 significant captive customer base for the service(s). The commission will consider the
283 factors outlined in RCW 80.36.320 (1) (a) - (d) when determining whether a company is
284 competitive.

285 (6) The competitive classification becomes effective on the stated effective date
286 unless the commission suspends the proposed classification. If the commission
287 suspends a proposed classification, it will enter a final order within six months from the
288 date the petition was filed.

289

290 **WAC 480-121-062 Content of Requirements for filing a petition for competitive**
291 **classification of competitive a telecommunications services and companies.**

292 In addition to the requirements of ~~WAC 480-08-050(13)~~, a petition for classification of a
293 competitive telecommunications service or a competitive telecommunications company
294 shall, at a minimum, be accompanied with the following:

295 A petition for competitive classification of a telecommunications service must, at a
296 minimum, include:

297 (1) The Nname and address of the petitioner petitioning company;

298 (2) The name and telephone number of regulatory contact;

299 (23) A description of the services it offers;

300 (34) The Nnames and addresses of any entities which that would be classified as
301 "affiliated interests" of the petitioner pursuant to as defined in RCW 80.16.010; and

302 (45) ~~A statement of the services the petitioner contends are subject to effective~~
303 ~~competition, and with respect to each such service the following information shall be~~
304 ~~provided: A description of the service the petitioner proposes to classify as competitive.~~
305 With respect to each service, the petitioner must provide the following information:

306 (a) ~~Descriptions~~ A description of all functionally equivalent or substitute services
307 in the petitioner's definition of the relevant market for the service;

308 (b) The Nnames and addresses of all providers of such the services known or
309 reasonably knowable to the petitioner;

310 (c) The Pprices, terms, and conditions under which such the services are offered
311 by competitors to the extent known or reasonably knowable to the petitioner;

- 312 (d) A geographical ~~delineation~~ description of the relevant market;
- 313 (e) An estimate of the petitioner=s market share ~~and any past or projected~~
 314 ~~change in market share;~~
- 315 (f) A description of ease of entry into the market;
- 316 (g) A statement of whether the petitioner has a significant captive customer base
 317 and the basis for any contention that it does not; and
- 318 (h) A verifiable cost-of-service study supporting the contention that the price or
 319 rate charged for the service covers its cost. ~~A petition which contends that all of a~~
 320 ~~company=s services are competitive and does not seek classification for some services~~
 321 ~~if others are denied classification is exempted from this requirement;~~
- 322 (i) ~~The manner by which notice of price list changes will be provided to customers~~
 323 ~~and the commission.~~

324

325 **WAC 480-121-063 Waiver of rRegulatory requirements that may be waived for**
 326 **competitive competitively classified telecommunications companies.**

327 (1) The commission may waive ~~in writing~~ regulatory requirements for ~~competitive~~
 328 telecommunications companies that it has classified as competitive if it ~~determines~~
 329 determines that competition with the regulatory waiver will serve the same purposes as
 330 public interest regulation.

331 (2) ~~Any telecommunications company seeking competitive classification shall~~
 332 ~~include as part of its petition for classification any requests for waivers of regulatory~~
 333 ~~requirements. Requests for waiver not included in a classification petition shall be~~
 334 ~~granted or denied in writing. The commission reserves the right to set any such request~~
 335 ~~for hearing at its discretion. Any request for waiver of regulatory requirements must~~
 336 ~~include a statement as to how competition will serve the same purposes as public~~
 337 ~~interest regulation.~~

338 (32) By order, The commission may revoke waivers of regulatory requirements in
 339 the same manner in which they were granted if such it determines that revocation would
 340 is necessary to protect the public interest.

341 (3) Unless otherwise determined by commission order, the following regulatory
 342 requirements are waived for competitively classified companies:

- 343 (a) RCW 80.04.300 (budgets to be filed by companies-supplementary budgets);
- 344 (b) RCW 80.04.310 (commission's control over expenditures);
- 345 (c) RCW 80.04.320 (budget rules);
- 346 (d) RCW 80.04.330 (effect of unauthorized expenditure-emergencies);
- 347 (e) RCW 80.04.360 (earnings in excess of reasonable rate-consideration in fixing
 348 rates);
- 349 (f) RCW 80.04.460 (investigation of accidents);

- 350 (g) RCW 80.04.520 (lease of utility facilities);
- 351 (h) RCW 80.36.100 (tariff schedules to be filed and open to public);
- 352 (i) RCW 80.36.110 (tariff changes-statutory notice-exception);
- 353 (j) Chapter 80.08 RCW (securities) (except RCW 80.08.140, state not obligated);
- 354 (k) Chapter 80.12 RCW (transfers of property);
- 355 (l) Chapter 80.16 RCW (affiliated interests);
- 356 (m) Chapter 480-80 WAC (tariffs, price lists, and contracts) (except 480-80-2X1
- 357 use of price lists through WAC 480-80-2X5 price list availability to customers and 480-
- 358 80-3X1 contract for service);
- 359 (n) Chapter 480-140 WAC (budgets);
- 360 (o) Chapter 480-143 WAC (transfers of property);
- 361 (p) Chapter 480-146 WAC (securities and affiliated interests);
- 362 (q) WAC 480-120-031 (accounting);
- 363 (r) WAC 480-120-032 (expenditures for political or legislative activities);
- 364 (s) WAC 480-120-043 (notice to the public of tariff changes);
- 365 (t) WAC 480-120-046 (services offered);
- 366 (u) WAC 480-120-131 (reports of accidents);
- 367 (v) WAC 480-120-541 (access charges);
- 368 (w) WAC 480-120-542 (collective consideration of Washington intrastate rate,
- 369 tariff, or service proposals);
- 370 (x) WAC 480-120-544 (mandatory cost changes for telecommunications
- 371 companies).

372

373 **WAC 480-121-064—Investigations Reclassifying a competitive**

374 **telecommunications company or service.**

375 ~~(1) Information to the commission. The commission may require competitive~~

376 ~~telecommunications companies or telecommunications companies providing~~

377 ~~competitive services to submit periodically information relating to the factors set forth in~~

378 ~~WAC 480-120-027(7).~~

379 ~~(2) Reclassification. After notice and hearing, the commission may reclassify any~~

380 ~~competitive telecommunications company or service if such it determines that~~

381 ~~reclassification would protect the public interest. In any such hearing the burden shall~~

382 ~~rest on the telecommunications The telecommunications company to must demonstrate~~

383 ~~that the existing competitive classification is proper and consistent with the public~~

384 ~~interest.~~

385 ~~(3) Refunds. If the commission finds after notice and hearing that any class of~~

386 ~~subscribers to a noncompetitive telecommunications service has paid excessive rates~~

387 ~~because of below cost pricing of competitive telecommunications services, the~~
388 ~~commission may order refunds or credits.~~

389

390 ~~**WAC 480-121-070 Petition for competitive classification.**~~

391 ~~(1) In addition to meeting the requirements of WAC 480-120-023, a petition for~~
392 ~~competitive classification must state an effective date no sooner than thirty days from~~
393 ~~the filing date.~~

394 ~~(2) The petitioner must provide notice in the same manner as provided in WAC~~
395 ~~480-80-120 for tariff changes.~~