

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending,)	
Adopting, and Repealing)	DOCKET NO. UT-040015
)	
)	GENERAL ORDER NO. R-516
Rules in Chapter 480-120 WAC,)	
Chapter 480-122 WAC, and Chapter)	
480-80 WAC)	ORDER AMENDING, ADOPTING
)	AND REPEALING RULES
Relating to Telecommunications)	PERMANENTLY
)	
.....)	

1 STATUTORY OR OTHER AUTHORITY: The Washington Utilities and Transportation Commission takes this action under Notice WSR # 04-17-133, filed with the Code Reviser on August 18, 2004, and Notice WSR # 04-22-072, filed with the Code Reviser on November 1, 2004.¹ The Commission brings this proceeding pursuant to RCW 80.01.040, and RCW 80.04.160.

2 STATEMENT OF COMPLIANCE: 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), the State Environmental Policy Act of 1971 (chapter 43.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 DATE OF ADOPTION: The Commission adopts this rule on the date that this Order is entered.

¹ On November 12, 2004, the Commission filed a continuance of WSR #04-22-072 at WSR #04-23-052 to provide notice of a change in the time of the hearing to receive public comment regarding the adoption of the rules that are the subject of the Supplemental CR-102.

- 4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325 requires that the Commission prepare and provide to commenters a concise explanatory statement about an adopted rule. The statement must include the identification of the reasons for adopting the rule, a summary of the comments received regarding the proposed rule, and responses reflecting the Commission's consideration of the comments.
- 5 The Commission often includes a discussion of those matters in its rule adoption order. In addition, most rulemaking proceedings involve extensive work by Commission Staff that includes summaries in memoranda of stakeholder comments, Commission decisions, and Staff recommendations in each of those areas.
- 6 In this docket, to avoid unnecessary duplication, the Commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the open meetings where the Commission considered whether to begin a rulemaking and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.
- 7 **REFERENCE TO AFFECTED RULES:** This rule repeals, amends, or adopts the following sections of the Washington Administrative Code:

Affected Rules			
Action	WAC No.	Rule Title	Changes
Chapter 480-120 WAC, Telecommunications Operations			
Amend	480-120-021	Definitions.	1. Amend definitions of Class A and Class B companies to include reference to new section, WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).
Adopt	480-120-034	Classification of local exchange companies as Class A or Class B.	1. Adopt to clarify standard for classifying Class A and Class B companies. Clarify that affiliates' lines count in the calculation.
Amend	480-120-112	Company performance for orders for nonbasic services.	1. Correct WAC title reference.
Amend	480-120-122	Establishing credit—Residential services.	1. Grammar change. 2. Add ability to make advanced payments for ancillary service. 3. Amend to provide ability to make equal deposit amount payments.
Amend	480-120-128	Deposit administration.	1. Revise effective date for calculating interest on customer deposits. 2. Clarify that rule is for retail services.
Amend	480-120-147	Changes in local exchange and intrastate toll services.	1. Amend to be consistent with the federal rule. 2. Amend to establish time limit for LECs to lift freeze, and to submit a change order. 3. Change the term “customer” to “subscriber” throughout section to parallel FCC term. 4. Make grammar changes.
Amend	480-120-161	Form of bills.	1. Amend to require Internet address of website of service provider's tariff or price list.

Amend	480-120-166	Commission-referred complaints.	<ol style="list-style-type: none"> 1. Delete subsection (11), amend to eliminate confusion caused from subsection (11). 2. Clarify requirement in subsections (8) and (9).
Amend	480-120-172	Discontinuing service— Company initiated.	<ol style="list-style-type: none"> 1. Amend to clarify “deceptive means.” 2. Provide consistent language across WACs. 3. Grammar changes.
Amend	480-120-173	Restoring service after discontinuation.	<ol style="list-style-type: none"> 1. Provide consistent language across WACs. 2. Move payment arrangements portion to WAC 480-120-174. 3. Grammar changes.
Amend	480-120-174	Payment arrangements.	<ol style="list-style-type: none"> 1. Clarify when companies must restore service. 2. Amend to provide ability to make equal deposit amount payments.
Amend	480-120-196	Customer notice requirements— Competitively classified telecommunications companies or services.	<ol style="list-style-type: none"> 1. Incorporate requirement to include the web address of the price list on bills and notices.
Repeal	480-120-201	Definitions.	<ol style="list-style-type: none"> 1. Enjoined from enforcement by the U.S. District Court, Seattle.
Adopt	480-120-202	Customer proprietary network information.	<ol style="list-style-type: none"> 1. Adopt by reference FCC’s rules relating to customer proprietary information, codified at sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations (47 C.F.R. §§ 64.2003 through 64.2009)
Repeal	480-120-203	Use of customer proprietary network information (CPNI) not permitted to identify or track customer calls to competing service providers.	<ol style="list-style-type: none"> 1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-204	Opt-in approval required for use, disclosure, or access to customer I-CPNI.	<ol style="list-style-type: none"> 1. Enjoined from enforcement by the U.S. District Court, Seattle.

Repeal	480-120-205	Using customer proprietary network information (CPNI) in the provision of services.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-206	Using individual customer proprietary network information (I-CPNI) during inbound and outbound telemarketing calls.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-207	Use of private account information (PAI) by company or associated companies requires opt-out approval.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-208	Use of customers' private account information (PAI) to market company products and services without customer approval.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-209	Notice when use of private account information (PAI) is permitted unless a customer directs otherwise (opt-out).	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-211	Mechanisms for opting out of use of private customer account information (PAI).	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-212	Notice when express opt-in approval is required and mechanisms for express approval.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-213	Confirming changes in customer approval status.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-214	Duration of customer approval or disapproval.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-215	Safeguards required for I-CPNI.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Repeal	480-120-216	Disclosing CPNI on request of customer.	1. Enjoined from enforcement by the U.S. District Court, Seattle.
Amend	480-120-253	Automatic dialing-announcing device (ADAD).	1. Amend to remove the prohibition of using automatic dialing and announcing devices for unlisted telephone numbers.

Amend	480-120-262	Operator service providers (OSPs).	1. Amend to change “customer” to “consumer” in “Operator services” definition in subsection (1).
Repeal	480-120-302	Accounting requirements for companies not classified as competitive..	1. Repeal for consistency with chapter reorganization in Docket No. A-021178. Replaced by WAC 480-120-359..
Adopt	480-120-359	Companies not classified as competitive.	Replaces WAC 480-120-302. 1. Change section number and title to correspond to chapter reorganization in Docket No. A-021178. 2. Amend to remove definition that duplicates definitions used in WAC 480-120-021.
Repeal	480-120-322	Retaining and preserving records and reports.	1. Repeal for consistency with chapter reorganization in Docket No. A-021178. Replaced by WAC 480-120-349.
Adopt	480-120-349	Retaining and preserving records and reports.	Replaces WAC 480-120-322. 1. Change numbering system to correspond to chapter reorganization in Docket A-021178.
Amend	480-120-402	Safety.	1. Correct reference to WAC 480-120-999 (Adoption by reference) for information about the applicable version of National Electric Safety Code.. 2. Grammar change.
Amend	480-120-414	Emergency operation.	1. Grammar change.
Amend	480-120-439	Service quality performance reports.	1. Grammar / style changes.
Amend	480-120-450	Enhanced 9-1-1 (E911) obligations of local exchange companies.	1. Amend to clarify the obligation to make changes to customer records.
Amend	480-120-540	Terminating access charges.	1. Incorporate the often-granted CLEC waiver into the rule itself.
Amend	480-120-999	Adoption by reference.	1. Update one reference. 2. Grammar and reference changes.

Chapter 480-122 WAC, Washington Telephone Assistance Program			
Amend	480-122-020	Washington telephone assistance program rate.	1. Eliminate requirement that non-ETCs offer the WTAP benefit if they have more than 100 residential customers.
Repeal	480-122-060	Telephone assistance excise tax.	1. Repeal section on WTAP tax collections. A 2004 statutory revision eliminated the need for rule.
Chapter 480-80 WAC, Utilities General—Tariffs, price lists, and contracts			
Amend	480-80-123	Tariff changes that do not require statutory notice.	1. Amend for consistency with RCW 80.36.110(1).
Amend	480-80-204	Price lists format and content.	1. Amend to include requirements for title page content of price list.
Amend	480-80-206	Price list availability to customers.	1. Delete requirement to include the web address of the price list on bills and notices. Incorporate this requirement into the rules governing bills (WAC 480-120-161) and notices (WAC 480-120-196).

8 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on January 21, 2004, at WSR # 04-03-118, and January 27, 2004, at WSR # 04-04-021.

9 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT:**

The statement at WSR # 04-03-118 advised interested persons that the Commission was considering entering a rulemaking on possible corrections and changes to the rules in Chapter 480-120 WAC, Telephone Companies, and Chapter 480-80 WAC, Utilities General—Tariffs, Price Lists, and Contracts, relating to telecommunications. The statement at WSR # 04-04-021 advised interested persons that the Commission was considering entering a rulemaking on possible corrections and changes to rules relating to telecommunications in Chapter 480-122 WAC, Washington Telephone Assistance Program. The Commission also informed persons of the inquiry into these matters by providing notice of the subjects and the CR-101s to all persons on the

Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered telecommunications companies and the Commission's list of telecommunications attorneys. The Commission posted the relevant rulemaking information on its internet web site at <http://www.wutc.wa.gov>.

10 **WORKSHOP; WRITTEN COMMENTS:** Pursuant to the notice, the Commission held one stakeholder workshop on March 11, 2004. Representatives of regulated telecommunications companies and consumer advocacy organizations attended the workshop and/or filed written comments.

11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on August 18, 2004, at WSR # 04-17-133. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 04-17-133 at 9:30 a.m., Wednesday, September 22, 2004, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

12 The Commission filed a supplemental notice of Proposed Rulemaking (Supplemental CR-102) on November 1, 2004, at WSR # 04-22-072. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 04-22-072 at 9:30 a.m., Friday, December 10, 2004, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission. On November 12, 2004, the Commission filed a continuance at WSR # 04-23-052 that continued the time of the hearing to receive public comment regarding adoption of the rules that are the subject of the Supplemental CR-102 from 9:30 a.m. to 1:30 p.m. on December 10, 2004.

13 **ORAL COMMENTS:** Rhonda Weaver, representing Comcast Phone of Washington, LLC, requested that the proposed language in subsection (4) of WAC 480-120-034 (Classification of local exchange companies as Class A or Class B) be revised. She asked that the word “promptly” be replaced with more time-specific language. Richard Potter, representing Verizon Northwest, Inc., commented that this section is problematic because the A and B classifications impose regulatory burdens. Mr. Potter argued that the proposed rule takes a specific, narrow categorization from RCW 80.04.530 and illogically applies the Class A and Class B labels beyond that context, with unwarranted results. He suggested the Commission should make a conscious decision on whether burdens should be imposed on these other companies and consider the value of slavish adherence to a statute that would produce unwarranted regulations.

14 Mary Kimball, representing Public Counsel, argued that the most effective means of safeguarding private customer account information is through an all-inclusive opt-in approach. She noted that this approach is also consistent with the preference of the vast majority of customers. Public Counsel recommended that the Commission pursue further rulemaking to consider whether a broader opt-in approach could be adopted that would meet the objections raised to the prior approach. In the alternative, Public Counsel recommended that the Commission conduct further rulemaking to, at a minimum, adopt Washington rules consistent with the current FCC rules. According to Public Counsel, this would provide a basis for better enforcement in Washington of existing protections.

15 **COMMENTERS (WRITTEN COMMENTS):** The Commission received written comments from Citizens Utility Alliance of Washington, AT&T Communications of the Pacific Northwest, Inc., TCG Seattle and TCG Oregon (collectively AT&T), Public Counsel, Qwest Corporation, and Verizon Northwest, Inc.

16 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on September 22, 2004,

before Chairwoman Marilyn Showalter and Commissioner Patrick Oshie. The Commission heard oral comments from Sharyn Bate, representing Commission Staff. Richard Potter representing Verizon Northwest, Inc. commented on WAC 480-120-034 (Classification of local exchange companies as Class A or Class B).

17 The Commission considered the supplemental rule proposal (*i.e.*, supplemental CR-102) for adoption pursuant to the Notice at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on December 10, 2004, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick J Oshie. No one appeared to offer oral comments.

18 **SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED OR REJECTED:** In this section the Commission responds to comments made on the proposed rules. The Commission received fifteen suggested changes from five interested persons. The intent of this rulemaking is only a tune-up of the rules. Some suggested changes to the rules went beyond the intent and were not addressed under this docket.

19 The material in this section is organized by rule number. In each response we indicate whether we made a change in the adopted rules in response to a comment, or adhered to the language in the proposed rule.

WAC 480-120-034—Definition of Class A and Class B Companies.

20 Verizon contends that the wording in proposed WAC 480-120-034(3) is inadvisable. Verizon suggests that the Commission revisit both its rationale for having the A and B classifications at all, and its use of those classifications to impose regulatory burdens. According to Verizon, the proposed rule takes a specific, narrow categorization from RCW 80.04.530 and illogically applies the Class A and Class B labels beyond that context, with unwarranted results. Verizon believes that the Commission should make a conscious decision on

whether burdens should be imposed on these other companies and consider the value of slavish adherence to a statute that would produce unwarranted regulations.

21 The Commission does not accept this suggestion. The Commission made a reasoned decision in Docket No. UT-990146 to use the standard in RCW 80.04.530 to define company size for the purpose of reporting requirements. It is reasonable to relieve companies of regulatory reporting burdens based on the size of the company and to distinguish company size by considering all the operations of a company in a particular state. When the Commission excuses small companies from reporting requirements, it reduces its ability to monitor those companies and protect those companies' customers from unreasonable rates and services. The Commission's decision to do so should balance the loss of oversight ability against the cost to the regulated company of complying with those reporting requirements. It is quite common for a company with multiple operating companies to consolidate the regulatory compliance and reporting functions, enabling it to meet these requirements at lower cost. Therefore, compliance costs should be lower for a company with a larger customer base, and this economy of scale should apply even when the customer base is spread over more than one operating company. The result is not, as suggested by at least one commenter, full-scale regulation of any small competitive local exchange company that is affiliated with a large incumbent local exchange company, because the Commission separately provides for reduced regulatory requirements for both Class A and Class B competitive companies. *WAC 480-120-439.*

WAC 480-120-122—Establishing credit—Residential services.

Subsections (1) and (4)

22 AT&T contends subsections (1) and (4) are unclear as to how the deposit amount would be determined when a customer subscribes to a bundled (local plus features or long distance) service.

23 The Commission does not agree with AT&T's contention. The proposed rule includes a revision of subsection (1) to state more clearly that the more restrictive deposit policy applies only to a company's lowest-priced flat-rated local service offering. To the extent there may be confusion in the future, the better way to address the confusion is through informal or formal clarification rather than further rule amendment.

24 In the last rule making, the Commission responded to industry suggestions by giving companies more flexibility in establishing deposit requirements for local service bundles. Companies were given more flexibility to establish deposit requirements for all higher-priced bundles. This kind of flexibility leads to complexity, and complexity can lead to confusion. The stricter rule on deposits was limited to local service; if a company did not offer local service outside a bundle, the rule applied to the local bundle with the lowest price. For this bundle, the company may require a deposit only if the conditions in subsection (1) exist. For all other bundles, companies may use any reasonable method to decide whether to require a deposit. Once the company determines that a deposit may be required, the amount of the deposit is based on the customer's anticipated bill, as stated in subsection (4). If a company seeks a more formal explanation of the intent of the rule, the company can bring the issue before the Commission at an open meeting. A company may request an exemption if it cannot meet the requirements of the rule.

WAC 480-120-122 Establishing credit—Residential services.

Subsection (5)

25 AT&T suggests that the provision for a customer to pay a deposit over time should allow for three equal deposit payments, in addition to the existing option of paying 50 percent, 25 percent, and 25 percent. According to AT&T, the 50/25/25 structure is unique to Washington. AT&T acknowledges that it did not focus on this issue in the last rulemaking because it was not offering residential

service at that time. While AT&T admits that it would benefit from its suggested revision for only a short time because it is exiting the residential market, AT&T contends that the proposal still makes sense from a public policy standpoint.

26 The Commission accepts AT&T's suggestion by amending the provision to provide that "no more than" 50 percent of the deposit may be collected the first month. Any company wishing to collect the lesser amount of 33 1/3 percent may do so and collect the remaining amount payable in two equal amounts, also 33 1/3 percent.

WAC 480-120-147 Changes in local exchange and intrastate toll services.

27 AT&T contends that the existing rule is not consistent with the corresponding federal rule. Specifically, AT&T points out that the state rule uses the term "customer" in subsection (1), where the federal rule uses the term "subscriber." AT&T explains that due to differences in definition of the two terms, the state rule does not allow a customer's family members to authorize a change in service, while the federal rule does.

28 In addition, AT&T contends that subsection (4) does not properly reflect a 2003 FCC interpretation relating to customers who subscribe to a carrier under a written term contract.

29 The Commission addressed AT&T's concerns by issuing a supplemental CR-102. The language proposed in the supplemental CR-102 received no written or oral comments and thus apparently addresses the concern.

WAC 480-120-164 Pro rata credits.

30 AT&T remains concerned that a literal reading of the requirement to provide a credit whenever service is not available for more than 24 hours creates an obligation on companies to install monitoring systems to detect all outages.

31 The Commission does not share AT&T's concern. As a procedural matter, the CR-102 proposed no revisions to WAC 480-120-164. Therefore this suggestion is outside the scope of the proceeding. The Commission will monitor this rule for possible review in the future.

WAC 480-120-172 Discontinuing service—Company initiated.

32 AT&T commented that identity theft is a serious problem and a crime, which once detected must be acted on quickly to reduce the amount of harm caused by such theft. AT&T proposes that the Commission add a provision to the rule on company-initiated discontinuance that would allow a company to disconnect a customer, without notice, when identity theft is detected.

33 The Commission did not accept this proposal. The rule already provides for without-notice discontinuance when a customer has “used deceptive means to initiate or continue service.” The rule then lists three examples of deceptive means, and AT&T would add a fourth example. Obtaining service using someone else's identity is plainly a “deceptive means;” adding it as an example would not contribute to the rule.

WAC 480-120-174 Payment arrangements.

34 AT&T suggests that if the Commission accepts its proposals for modification of WAC 480-120-122 allowing deposits to be paid in two or three equal payments, then subsection (1) of this rule would also need to be modified.

35 The Commission accepts this suggestion.

WAC 480-120-196 Customer notice requirements – Competitively classified telecommunications companies or services.

36 AT&T suggests that the rule should be amended to allow for notice of some price list changes on the first bill after the change becomes effective. AT&T sees no reason for opposition to the change since it simply gives competitive companies the same flexibility that it gives noncompetitive companies. AT&T argues that from a policy standpoint, competitive companies have less stringent notice requirements than noncompetitive companies, so it makes no sense to hold them to a more stringent standard under these circumstances.

37 The Commission does not accept this suggestion. The distinction identified by AT&T is based not on policy, but on differences in the law governing competitive and non-competitive services. RCW 80.36.110 requires that companies provide *customers* with notice of a price list change 10 days in advance of that change. The corresponding provision regarding tariffs requires advance notice to the *Commission* but not to *customers*. Therefore the Commission has the authority to allow for after-the-fact notice for tariff changes, but it does not have that authority for price list changes.

WAC 480-120-202 Customer proprietary network information.

38 With respect to customer proprietary network information, Citizens Utility Alliance of Washington (Alliance) and Public Counsel propose that the Commission pursue an opt-in requirement or adopt additional requirements for opt-out notice and procedures. At a minimum, they recommend that the invalidated rules should be repealed.

39 The Commission accepts this suggestion in part. The Commission adopts by reference the federal privacy rules, which will improve the Commission's ability to protect customer privacy. Comments proposing further privacy rules do not address the legal issue of whether the state interest, which a federal court found to exist, can be advanced by adopting a rule that does not apply to customers of wireless telecommunications services.

WAC 480-120-439 Service quality performance reports.

40 AT&T requests that the Commission open another proceeding to discuss whether, given the proliferation of competition, there is a continued need for service quality reports. If the need exists, AT&T suggests development of standards which will result in uniformed reporting across all industry segments required to comply with the rule—in other words, standards that do not routinely require waivers or alternative reporting methods.

41 This suggestion does not include a change to the proposed rule and thus could not be accepted or rejected. The Commission will gain experience with CLEC service quality reporting over coming months, since Comcast, AT&T, and XO Communications are now required to report. The Commission may open a new rulemaking on service quality reporting if that experience reveals a problem with the existing requirements and the existing opportunity for alternative reporting methods.

WAC 480-120-540 Terminating access charges.

42 AT&T asks that the CLEC exemption be incorporated into the rule.

43 The Commission does not grant this request. The CLEC exemption is already incorporated into the proposed rule as subsection (2).

WAC 480-120-999 Adoption by reference.

- 44 Verizon continues to advocate that the Commission rule in this section should allow the use of the most recent versions of the indicated standards. Verizon notes that revisions to industry standards take place on a routine basis. For example, Institute of Electrical and Electronic Engineers (IEEE) standard IEEE-820 is currently undergoing a revision. A new version is expected to be released in early 2005. Likewise, T1.510-1999 is scheduled for revision or reaffirmation in 2004. Communications companies try to stay current with the most recent versions of industry standards. Obviously, when Commission rules cite a specific version of a standard, particularly an outdated version, problems can arise for national companies. Verizon contends that subsection (4) of this rule, which cites the 1998 version of 47 C.F.R, is a good case in point. If this subsection is not updated to allow use of the most current version of FCC accounting rules, companies will have to petition the Commission each time the FCC makes changes to the USOA.
- 45 The Commission does not accept this suggestion. The Commission cannot delegate its regulatory authority to an industry standard-setting body, a federal regulatory agency, or any other entity. Adoption of an industry standard or a federal regulation that is not yet in effect would delegate the Commission's authority to the entity that sets the standard or regulation.
- 46 The Commission is attempting to minimize the effects of this limitation by using the "adoption by reference" approach. All adoptions of third-party standards and rules are specified in a single section, WAC 480-120-999. This makes it easier to review these references regularly and update them quickly as the need arises. The adoption by reference of the 1998 version of 47 C.F.R. is not a good example of an outdated adoption by reference. The Commission concluded in the last telecom rules review that the accounting rules to be used for intrastate purposes should be the 1998 version rather than later, less comprehensive rules. The use of the 1998 version reflects a deliberate policy decision by the Commission rather

than unconsidered delegation of intrastate regulatory authority to the Federal Communications Commission.

WAC 480-122-020 Washington telephone assistance program rate.

47 Alliance expresses concern that there may be parts of the state that do not have a designated eligible telecommunications carrier (ETC), and that the Washington telephone assistance program (WTAP) customers may have little if any competitive choices in those areas. Alliance did not submit a proposal that would address its concern.

48 The Commission does not share Alliance's concern. All incumbent local exchange companies are designated as ETCs in all areas where they offer service. The objective of having a choice of providers for WTAP customers should be advanced through the design and management of WTAP.

49 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend, repeal, and adopt the rules in the CR-102 Notice at WSR #04-17-133 and WSR #04-22-072 with the changes described below.

50 **CHANGES FROM PROPOSAL:** After reviewing the entire record, the Commission adopts the CR-102 proposal and the supplemental CR-102 proposal with the following changes from the text noticed at WSR # 04-17-133.

WAC 480-120-122 (Establishing credit—Residential services).

51 WAC 480-120-122, as published in the CR-102, is edited as follows:

WAC 480-120-122 (5)(a) ~~The customer may p~~Pay no more than fifty percent of the requested deposit amount before installation or continuation of service, with the remaining amount payable in equal amounts over the following two months;”

WAC 480-120-172 Discontinuing service – Company initiated.

52 WAC 480-120-172, as published in the CR-102, is edited as follows:

(1) A company may discontinue service without notice or without further notice when, after conducting a thorough investigation, it finds the customer has used deceptive means to initiate or continue service, including but not limited to:

- (a) Tampering with the company's property;
- (b) Using service through an illegal connection; or
- (c) Unlawfully using service or using service for unlawful purposes.

(7) **Discontinuation notice requirements.** The company must provide the customer notice before discontinuing service in accordance with (a) through (c) of this subsection, except as provided in subsection (1) of this section, and except as provided in WAC 480-120-122(58).

WAC 480-120-174 Payment arrangements.

53 WAC 480-120-174, as published in the CR-102, is edited as follows:

WAC 480-120-174(1) General. Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer’s most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first ~~half~~

installment of a deposit is paid as provided for in WAC 480-120-122 (Establishing credit—Residential services).

WAC 480-120-999 Adoption by reference.

54 WAC 480-120-999 as published in the CR-102, is edited as follows:

(5) *Sections 64.2003 through 64.2009 of Title 47 of the Code of Federal Regulations*, cited as 47 C.F.R. §§ 64.2003 through 64.2009, are published by the United States Government Printing Office.

(a) The commission adopts the version in effect on October 1, 2002.

(b) This publication is referenced in WAC 480-120-~~207~~202 (Customer Proprietary Network Information).

55 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC sections 480-120-201, 480-120-203, 480-120-204, 480-120-205, 480-120-206, 480-120-207, 480-120-208, 480-120-209, 480-120-211, 480-120-212, 480-120-213, 480-120-214, 480-120-215, 480-120-216, 480-120-302, 480-120-322, and 480-122-060 should be repealed to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

56 WAC sections 480-120-021, 480-120-112, 480-120-122, 480-120-128, 480-120-147, 480-120-161, 480-120-166, 480-120-172, 480-120-173, 480-120-174, 480-120-196, 480-120-253, 480-120-262, 480-120-402, 480-120-414, 480-120-439, 480-120-450, 480-120-540, 480-120-999, 480-122-020, 480-80-123, 480-80-204, and 480-80-206 should be amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

57 WAC sections 480-120-034, 480-120-202, 480-120-349, and 480-120-359 should be adopted to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380 (2) on the thirty-first day after filing with the Code Reviser.

58 **THE COMMISSION ORDERS:**

59 WAC sections 480-120-201, 480-120-203, 480-120-204, 480-120-205, 480-120-206, 480-120-207, 480-120-208, 480-120-209, 480-120-211, 480-120-212, 480-120-213, 480-120-214, 480-120-215, 480-120-216, 480-120-302, 480-120-322, and 480-122-060 are repealed to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

60 WAC sections 480-120-021, 480-120-112, 480-120-122, 480-120-128, 480-120-147, 480-120-161, 480-120-166, 480-120-172, 480-120-173, 480-120-174, 480-120-196, 480-120-253, 480-120-262, 480-120-402, 480-120-414, 480-120-439, 480-120-450, 480-120-540, 480-120-999, 480-122-020, 480-80-123, 480-80-204, and 480-80-206 are amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

61 WAC sections 480-120-034, 480-120-202, 480-120-349, and 480-120-359 are adopted to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

62

This Order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall 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 7th day of January, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 4, amended 22, repealed 17.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.