

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

<b>In Re Rules Relating to Commission General -</b>	)	
<b>Tariffs: Chapter 480-80 WAC</b>	)	<b>Docket No. UT-991301</b>
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**SUPPLEMENTAL COMMENTS OF VERIZON NORTHWEST INC.**

**DECEMBER 12, 2000**

## I. INTRODUCTION

Verizon Northwest Inc. (“Verizon”) submits these comments to supplement its comments filed on October 27, 2000. They are necessary to address an important aspect of the staff's intentions in this docket that was explained to the parties at the November 14, 2000 workshop. In view of this intent, Verizon must oppose the proposed new rules and urge the Commission to very carefully consider their possible impacts on service providers and consumers in Washington. The Commission should open a separate proceeding should it desire to consider the major policy change advocated by the Commission staff.

## II. COMMENTS

According to the Notice issued on October 2, 2000, the objective of this rulemaking is to review the Commission's rules in chapter 480-80 WAC in compliance with Executive Order 97-02 to determine whether the:

- 1) Rules comply with authorizing statutes;
- 2) Rules are obsolete, duplicative, or need to be repealed;
- 3) Rules provide the results that they were originally intended to achieve; and
- 4) Rules are written and organized in a clear and concise manner, in order that they may be readily understood by those to whom they apply.

The staff intends more than this, however. It proposes to substantially change how price lists are handled and the legal effect that they will have. Indeed, as Verizon understands staff's objective, price lists may have no legal effect at all should the proposed rules be adopted.

While Verizon supports regulatory streamlining for competitive services, the proposed rules could well have the opposite effect. Instead, they could impose greater burdens by creating a significant legal distinction between price listed services and tariffed services. Telecommunications providers use price lists - - like tariffs - - in lieu of individual contracts with every customer. This is consistent with long regulatory practice and judicial doctrine (including the “filed rate doctrine”). Verizon believes the Commission should open a separate rulemaking

if it desires to change the legal effect of price lists. However, if the Commission continues with this rulemaking, Verizon urges it to have the parties separately brief the legal issues and to proceed with caution before discarding these precedents and practices.

1. Tariffs vs. price lists.

Under Washington statutes, tariffs and price lists have the same legal effect.

WAC 480-80-030 defines “tariffs“ to

mean the complete tariff or any portion thereof containing those rates, schedules and rules and regulations relating to charges and service which is regularly established under and in accordance with these rules and regulations relating to charges and service which is regularly established under and in accordance with these rules and regulations and the applicable statutes and which is applied to specific groups of customers within any particular territory but shall exclude special contracts for special rates, service and facilities.

The Washington Supreme Court accepted the definition of “tariff” from the Code of Federal Regulations in Tenore v. AT&T Wireless Servs., 136 Wn.2d 322, 962 P.2d 104 (1998). In footnote 36 of that case, the court stated: “Tariff” is defined as “schedules of rates and regulations filed by common carriers.” 47 CFR § 61.3(ii) (1997). Courts commonly use “filed rate” to refer to a “tariff”.

There is no definition for “price list” in Washington law. The term is used in statutes and regulations dealing with treatment of competitive telecommunications services and companies. For instance, RCW 80.36.320(2) states:

Minimal regulation means that competitive telecommunications companies may file, instead of tariffs, price lists that shall be effective after ten days’ notice to the Commission and customers.

(See also RCW 80.36.330, 80.36.135(5), 80.04.130(3), WAC 480-120-027, 480-80-041.)

The chief distinction between a price list and a tariff relates to effective dates and customer notice. Price lists are effective upon ten days’ notice to the Commission and customers; tariffs are effective upon thirty days’ notice.

Tariffs and price lists both contain “schedules showing the rates, tolls, rentals, and charges of such companies for messages, conversations and services rendered and equipment and

facilities supplied”, mandated by RCW 80.36.100. Companies such as Verizon file both price lists and tariffs. Both contain rate information, as well as necessary terms and conditions of service, such as limitation of liability provisions. Our research has disclosed no meaningful legal distinction between a tariff and a price list.

2. Staff intends the proposed rules to create a legal distinction between price lists and tariffs.

The intent behind these proposed rules, according to Commission staff, is to move away from the use of filed price lists. The staff has advised Verizon that it sees this as a pro-consumer move for various reasons. Verizon will not comment on those reasons at this time, however, since staff has not generally detailed them in writing for the parties and the Commission.

The staff has acknowledged that the Commission does not have authority to eliminate the filing of price lists at this time because price lists are required by RCW 80.36.320 and .330. The proposed rules are intended to instead effectively make the price lists meaningless.

Verizon opposes the concept of mandatory de-tariffing - - or in this case, mandatory de-price listing - - whether accomplished directly by prohibiting the filing of price lists or indirectly by depriving the filings of their legal effect. De-price listing requires that carriers establish service agreements/contracts for new and existing customers which would incorporate rates, terms and conditions currently contained in price lists. While Verizon might support permissive de-price listing for certain services, it does not support mandatory de-price listing, because it would significantly increase administrative costs for companies, the potential for customer confusion and the potential for increased litigation.

Proposed WAC 480-80-X01 appears to continue to require the filing of price lists, although subsection 2 of this proposed rule would exempt competitively classified carriers “from the requirements of RCW 80.36.130,” which requires all rates charged to customers to be published.

But the key to staff's strategy appears to be the provision in proposed rules 480-80-X01(3) and 480-80-X03(2) that would establish a "file and use" basis for accepting price lists at the Commission. As Verizon understands it, staff believes this disclaimer of any active Commission supervision of the price lists would prevent them from being legally binding, while tariffs would continue to have legal effect.

The "file and use" verbiage of subsection (3) notwithstanding, it is possible that the combined effect of subsections (4), (5) and (6) would be to undermine the "filed rate doctrine" and increase disputes about what rate is binding on a given customer. This possible impact should be carefully considered. On the other hand, it may be that these subsections would provide new flexibility by allowing companies to, in effect, have banded rate price lists where the rate applicable to a given customer would be documented in a customer-specific agreement. In any event, the intended and the actual legal and administrative effects should be thoroughly discussed and clearly understood before the Commission takes action on the proposed rule.

3. The Commission should carefully investigate the legal and practical impact of the proposed rules.

Two important questions are presented: (1) would the proposed rules have the effect intended by the staff and, if so, (2) should the Commission make such a fundamental change in policy and practice at this time? The Commission should open a separate proceeding or at least set a separate briefing schedule to address these legal and policy issues. Verizon provides the following comments at this time on the second, practical issue.

Under the proposed rules, companies could have an increased burden rather than a minimized one. Companies would have to not only file price lists, but they could also be forced to prepare and enforce individual customer contracts for every service in order to make sure that critical contract rates, terms and conditions are created between the company and customer. Today, those terms and conditions are contained in the binding price list. The Commission should obtain information from the affected companies on the costs and administrative

ramifications of such a development. It should also consider potential positive and negative customer impacts.

### III. CONCLUSION

Verizon supports Commission efforts to minimize the paper flow that the companies and the Commission must deal with. Verizon does not, however, support the “file and use” aspect of the proposed rules or any other aspect that might eliminate price lists' legal effect. Verizon suggests opening a separate rulemaking to address these legal and policy issues. However, should the Commission continue with this rulemaking, it should thoroughly investigate this important aspect of the proposed rules. Verizon looks forward to working with the Commission to address its concerns.