

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-494
Cessation of Telecommunications)
Services) ORDER ADOPTING RULE
) PERMANENTLY
.....)

1 STATUTORY OR OTHER AUTHORITY: The Washington Utilities and
Transportation Commission takes this action under Notice WSR # 01-18-098, filed
with the Code Reviser on September 5, 2001. The Commission brings this
proceeding pursuant to RCW 80.04.160 and RCW 80.01.040.

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.

4 EMERGENCY RULES: An emergency rule governing cessation of
telecommunications services was filed with the Code Reviser under Notice WSR #
01-11-048 and effective May 10, 2001. The notice and workshop, and the written
comments received before the adoption of the emergency rule are described in the
order filed under Notice WSR #01-11-048. An identical emergency rule was filed
with the Code Reviser under Notice WSR #01-19-009 and effective September 7,
2001.

5 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.

6 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.

7 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 adoption hearing and 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's actions and of the agency's reasons for taking those actions.

8 REFERENCE TO AFFECTED RULES: This rule adopts the following section of the Washington Administrative Code:

WAC 480-120-083 Cessation of telecommunications services.

New section to eliminate or reduce severe personal, economic, and social disruptions resulting from unannounced cessation of telecommunications services.

9 PREPROPOSAL STATEMENT OF INQUIRY: The Commission filed a Preproposal Statement of Inquiry (CR-101) on June 6, 2001, at WSR # 01-12-102.

10 ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL STATEMENT: The statement advised interested persons that the Commission was considering entering a rulemaking to examine the need to adopt rules relating to cessation of telecommunications services. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 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 telecommunication companies and the Commission's list of telecommunications attorneys. Pursuant to the notice, the Commission held a rulemaking workshop on June 28, 2001. The workshop was attended by representatives of a diverse group of telecommunications companies and Public Counsel. The Commission developed draft rules using the information gathered from stakeholders.

11 On August 24, 2001, the Commission provided notice to interested persons of its intent to consider authorization of a CR-102 at its Open Meeting scheduled for August 29, 2001. On July 30, 2001, the Commission issued a questionnaire necessary for Staff to prepare a small business economic impact statement (SBEIS), and the rule to be considered for advancement from draft to proposed rule.

12 At the Open Meeting of August 29, 2001, Public Counsel, Qwest Corporation, (Qwest), and Sally Johnston, Assistant Attorney General commented on the rule. The Commission authorized filing a CR-102.

- 13 NOTICE OF PROPOSED RULEMAKING: The Commission filed a notice of Proposed Rulemaking (CR-102) on September 5, 2001, at WSR #01-18-098. The Commission scheduled this matter for oral comment and adoption under Notice WSR #01-18-098 at 9:30 a.m., Friday, November 16, 2001, 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.
- 14 WRITTEN COMMENTS: Comments were received in October from Sprint Communications, Inc. (Sprint), Public Counsel, Qwest, Verizon Northwest Inc. (Verizon), and Julie Stormes. The Commission accepted many of the proposals contained in these written comments. In particular:
- 15 Verizon commented that the draft rule uses language that is unclear or does not appear to target the situation anticipated by the Commission. In particular, subsections (1) and (2) used the term “reduce” which is used in the FCC’s rules but is largely arcane. Verizon suggested that this term be removed, and a phrase such as, “. . . cease, in all or any portion of the state, the provision of . . .” be inserted.
- 16 The Commission agreed and modified the language in subsections (1) and (2). Subsections (1) and (2) are revised to read “. . . cease, the provision of any telecommunications service, in all or any portion of the state.” The new language will more clearly cover a telecommunications company’s partial discontinuance of service.
- 17 Qwest commented that the draft language of the rule will require companies to comply with the 30-day notice requirements for the cessation of services that have no subscribers.
- 18 The Commission added subsection (1)(d) to specify that the rule does not apply to discontinued services that have no subscribers.
- 19 Qwest commented that the prohibition on using the information included in the notice required in subsection (5)(b), i.e., the circuit identification number/UNE components for marketing efforts, should apply equally to CLECs and resellers.
- 20 In response to Qwest’s comments, the Commission deleted the language in subsection (5)(b).
- 21 Verizon, Qwest, and Sprint voiced concerns with the oral notice requirement in subsection (4)(d)(ii). This requirement would cause an inconvenience or annoyance to customers. This requirement should be removed or modified to be less intrusive.

- 22 The Commission eliminated the oral notice requirement option in subsection (4)(d)(ii), and replaced it with the option of sending a second written notice.
- 23 Julie Stormes, an interested person, expressed her support for permanent adoption of WAC 480-120-083.
- 24 **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 Meeting on November 16, 2001, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick Oshie. The Commission heard oral comments from Kristen Russell, representing Commission Staff, and Dr. Glenn Blackmon, Assistant Director of Telecommunications.
- 25 Theresa Jensen of Qwest was the only stakeholder who testified at the hearing. Qwest expressed concerns with the current draft language of the rule. In particular, Qwest questioned the notice requirements of subsection (4)(d)(i) and (ii). Qwest objected that the last line of subsection (4)(d)(i) eliminates the subsection as a viable option because the affected company may not be able to reach a customer.
- 26 The Commission does not share Qwest's concerns. The language is intended to clarify/define what the Commission means by a "direct call." The language will assist companies in understanding their responsibility if they choose to use the option of subsection (4)(d)(i). Subsection (4)(d)(i) merely provides one option--companies are not required to make a direct call if they choose to use the revised option of subsection (4)(d)(ii).
- 27 Qwest also argued that the cost to comply with proposed subsection (4)(d)(ii), which proposed that exiting telecommunications companies must provide oral notice of cessation of service at the beginning of each call originated by a customer, would be excessive. Due in part to Qwest's testimony, as well as the Commission's concern that the rule may create a potential interruption of facsimile transmissions and computer connections to the Internet, the Commission deleted former subsection (4)(d)(ii) in its entirety and substituted the following language: "At least ten days before cessation of service, the exiting telecommunications company must provide a second written notice of cessation of service, including the date of cessation of service and a number to call for more information, if necessary." The rule will still require companies choosing the option to provide a second notice; however, the substituted language will be less costly for companies to comply with, and will be less annoying for many customers.
- 28 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** Public Counsel asked the Commission to include the Commission's toll-free number in the notice to customers.

- 29 The Commission rejects Public Counsel’s request because it does not believe that providing the Commission’s toll-free number would significantly benefit the customers and could add to customer confusion, as shown by experience in similar situations.
- 30 Verizon and Qwest believe that the rule is too broad and should be limited to companies completely exiting the Washington market, and then only to discontinuance of basic local service.
- 31 The Commission rejects this suggestion. It is in the public interest for companies that plan to discontinue any telecommunications service, or exit a particular geographic area within the state, to give their affected customers 30 days’ notice in order to allow customers the opportunity to obtain service from another provider.
- 32 Verizon commented that the rule creates excessive market exit regulations that may impede market entry. Verizon observes that the FCC has modified its discontinuance rules to reduce regulatory exit burdens and suggests the Commission do the same.
- 33 The Commission rejects this suggestion and determines that the rule is consistent with 47 CFR § 63.71, which requires carriers to file an application for discontinuance with the FCC on or after the carriers have given notice to their affected customers. The application is normally granted on the 31st day for non-dominant carriers and on the 60th day for dominant carriers. The Commission’s rule would require the shorter period – a minimum of 30 days notice to affected customers and the Commission.
- 34 Qwest also expressed concern that the proposed language of subsection (1)(c) is not qualified in any fashion and is too restrictive in that it is limited to requirements of the same provider. If a customer selects comparable service from the same provider, no notice is required, but if a customer replaces the discontinued service with another provider’s service, notice is required.
- 35 The Commission’s rule is aimed at carriers that are permanently discontinuing a service to their customers. Companies that plan to discontinue any telecommunications service, without replacing it with a comparable service, should give their affected customers 30 days’ notice in order to allow customers the opportunity to replace the discontinued service with comparable service from another provider. The rule does not apply to situations where a customer chooses to drop service with one ongoing provider and switch to a different ongoing provider.
- 36 Qwest asserts that the information required in subsection (8) is unnecessary for a subsequent provider. Qwest argues that that provider will order service from the reseller or another provider. In addition, it is possible that the “supplier” may not receive the required notices as mandated in subsection (8).

- 37 The Commission decides that to the extent that the subsequent provider is not the supplier, this information may be needed to provide a smooth transition of service. Subsection (8) is revised to include the phrase “if received” to address the possibility that the supplier does not receive the required notices and does not have the information to give the subsequent provider.
- 38 Qwest proposed changing the use of “voice” throughout subsection (4)(d) to “local exchange service, PBX, Centrex or private line service” unless the Commission intended something else.
- 39 The Commission eliminates the word “voice” from subsection (4)(d), but does not limit the notice requirements to the services suggested by Qwest. The Commission determines that it is imperative that customers of all telecommunications services being discontinued be given adequate notices of the discontinuance of their service in order to obtain service from another provider. The notice requirements in this rule accomplish the objective sought.
- 40 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission adopts the proposed rule, with the changes described below.
- 41 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal with the following changes from the text noticed at WSR #01-18-098. Certain language is rewritten or reorganized for clarity. The notice requirements in subsection (4)(d) are modified. Two optional forms of “second notice” replace the original format for a second notice, which required a recorded message to customers. Companies may now provide “second notice” either by a direct call to the customer or by a second written notice to the customer. Subsection (4)(e) is added, allowing companies to seek the Commission’s assistance in preparing notices.
- 42 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-120-083 should be adopted 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.

ORDER

- 43 **THE COMMISSION ORDERS:**
- 44 WAC 480-120-083 is adopted to read as set forth in Appendix A, as a rule 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). When adopted this rule will replace this emergency rule adopted under Notice WSR #01-19-009 and effective September 7, 2001.

45 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 RCW and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this 5th day of December, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

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 1, amended 0, repealed 0.

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.