

Chapter 480-121 WAC

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

WAC

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WAC 480-121-011 Application of rules.

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

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 Price lists that conflict with these rules without approval are superseded by these rules.

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

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

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

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

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

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

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

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

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

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

WAC 480-121-016 Additional requirements.

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

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

WAC 480-121-017 Severability.

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

WAC 480-121-018 Delivery of a filing.

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

(2) In person or by mail.

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

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

(3) Fax filing.

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

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

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

(4) Electronic filing.

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

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

WAC 480-121-020 Requirements for applications for registration applications, competitive classification petitions for competitive classification, and initial price lists.

(1) Applications for registration ~~must~~ and petitions for competitive classification must be in the form prescribed by the commission:

- (a) Be in the form prescribed by the commission;
- (b) Comply with the rules set forth in chapter 480-120 WAC; and
- (c) Be accompanied by the applicant's current balance sheet, latest annual report, if any, and a description of the telecommunications service it intends to offer.

(2) Applications for registration: Petitions for competitive classification must meet the requirements of WAC 480-120-023.

- (a) Must be filed with a petition for competitive classification and an initial price list unless applicant will not be subject to effective competition;
- (b) Must comply with the rules set forth in chapters 480-80 WAC and 480-120 WAC;

- (c) Must be filed at the office of the commission in Olympia, Washington;
- (d) Must include a declaration signed and dated by the applicant or its attorney certifying the accuracy of the filing; and

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

(3) Price lists must meet the requirements of WAC 480-120-027. The commission may require, with or without hearing, that an applicant for registration clearly show:

- (a) Adequate financial resources to provide the proposed service;
- (b) Adequate technical competence to provide the proposed service; and
- (c) Compliance with all applicable federal, state, and local telecommunications technical and business regulations.

(4) As a condition to registration, with or without hearing, the commission may require request that an applicant clearly show that: provide information regarding the applicant's regulatory performance in other states where it operates.

- (a) The applicant possesses adequate financial resources to provide the proposed service;
- (b) The applicant possesses adequate technical competence to provide the proposed service;

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

~~(5) The commission may request an applicant to provide information regarding the applicant's regulatory performance in other states in which it operates.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(d) The most current balance sheet;~~

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

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

~~(2) The commission will may deny an application for registration submitted by an alternate operator services provider if, after hearing, the commission finds that the application is operator services offered by the company or the charges for those services are not consistent with the public convenience and advantage. interest or that the applicant:~~

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

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

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

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

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

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

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

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

~~WAC 480-121-060 Revocation king a of registration.~~

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

~~(1a) File an annual report;~~

~~(2b) Pay regulatory fees;~~

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

(4c) Provide adequate service;

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

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

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

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

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

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

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

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

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

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

(74) Burden of proof. In any competitive classification proceeding, the telecommunications company ~~shall have~~ has the burden of demonstrating that the

company or specific service(s) at issue are is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include, but are not limited to:

- (a) The number and size of alternative providers of services;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

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

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

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

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

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

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

- (1) The Nname and address of the petitioner petitioning company;
- (2) The name and telephone number of regulatory contact;
- (23) A description of the services it offers;
- (34) The Nnames and addresses of any entities which that would be classified as "affiliated interests" of the petitioner pursuant to as defined in RCW 80.16.010; and
- (45) A statement of the services the petitioner contends are subject to effective competition, and with respect to each such service the following information shall be

~~provided:~~ A description of the service the petitioner proposes to classify as competitive.
With respect to each service, the petitioner must provide the following information:

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

~~(b) The N~~Names and addresses of all providers of ~~such~~ the services known or reasonably knowable to the petitioner;

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

~~(d) A geographical delineation~~ description of the relevant market;

~~(e) An estimate of~~ the petitioner=s market share and ~~any past or projected change in market share;~~

~~(f) A description of ease of entry into the market;~~ and

~~(g) A statement of whether~~ the petitioner has a significant captive customer base and the basis for any contention that it does not;_

~~(h) A verifiable cost_of_service study supporting the contention that the price or rate charged for the service covers its cost. A petition which contends that all of a company=s services are competitive and does not seek classification for some services if others are denied classification is exempted from this requirement;~~

~~(i) The manner by which notice of price list changes will be provided to customers and the commission.~~

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

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

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

~~(32) The commission may~~ by order revoke waivers of regulatory requirements ~~in the same manner in which they were granted if such~~ it determines that revocation ~~would be necessary to~~ protect the public interest.

(3) The following regulatory requirements are waived for competitively classified companies:

- (a) RCW 80.04.300 (Budgets to be filed by companies-Supplementary budgets);
- (b) RCW 80.04.310 (Commission's control over expenditures);
- (c) RCW 80.04.320 (Budget rules);
- (d) RCW 80.04.330 (Effect of unauthorized expenditure-Emergencies);
- (e) RCW 80.04.360 (Earnings in excess of reasonable rate-Consideration in fixing rates);
- (f) RCW 80.04.460 (Investigation of accidents);
- (g) RCW 80.04.520 (Lease of utility facilities);
- (h) RCW 80.36.100 (Tariff schedules to be filed and open to public);
- (i) RCW 80.36.110 (Tariff changes-Statutory notice-Exception);
- (j) Chapter 80.08 RCW (Securities) (except RCW 80.08.140, State not obligated);
- (k) Chapter 80.12 RCW (Transfers of property);
- (l) Chapter 80.16 RCW (Affiliated interests);
- (m) Chapter 480-80 WAC (Tariffs, price lists, and contracts) (except 480-80-201 Use of price lists through WAC 480-80-242 Using contracts for services classified as competitive);
- (n) Chapter 480-140 WAC (Budgets);
- (o) Chapter 480-143 WAC (Transfers of property);
- (p) Chapter 480-146 WAC (Securities and affiliated interests);
- (q) WAC 480-120-031 (Accounting);
- (r) WAC 480-120-032 (Expenditures for political or legislative activities);
- (s) WAC 480-120-043 (Notice to the public of tariff changes);
- (t) WAC 480-120-046 (Service offered);
- (u) WAC 480-120-131 (Reports of accidents);
- (v) WAC 480-120-541 (Access charges);
- (w) WAC 480-120-542 (Collective consideration of Washington intrastate rate, tariff, or service proposals); and
- (x) WAC 480-120-544 (Mandatory cost changes for telecommunications companies).

This rule supersedes all waivers of regulatory requirements for competitively classified companies granted by the commission at the time of a company's competitive classification. However, subsequent to the adoption of this rule, the commission may revoke the waiver of any regulatory requirement set forth in (a) – (x) above or may waive any regulatory requirement not included in (a) – (x) above.

WAC 480-121-064 Investigations Reclassifying a competitive telecommunications company or service.

~~(1) Information to the commission. The commission may require competitive telecommunications companies or telecommunications companies providing competitive services to submit periodically information relating to the factors set forth in WAC 480-120-027(7).~~

~~(2) Reclassification. After notice and hearing, the commission may reclassify any competitive telecommunications company or service if such it determines that reclassification would protect the public interest. ~~In any such hearing the burden shall rest on the telecommunications~~ The telecommunications company to must demonstrate that the existing competitive classification is proper and consistent with the public interest.~~

~~(3) Refunds. If the commission finds after notice and hearing that any class of subscribers to a noncompetitive telecommunications service has paid excessive rates because of below cost pricing of competitive telecommunications services, the commission may order refunds or credits.~~

WAC 480-121-070 Petition for competitive classification.

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

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