

Agenda Date: January 9, 2002
Item Number: 4B

Docket: **UT-991922**
Registration, Competitive Classification, and Initial Price Lists of
Telecommunications Companies – Rulemaking

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Recommendation:

Direct the Staff to prepare a Rule Adoption Order for Commissioners' review to adopt, amend, and repeal chapter 480-121 WAC as detailed in Attachment A, and WAC 480-120-052 and WAC 480-120-058 as detailed in Attachment B, to become effective simultaneously with the tariff rules in Docket U-991301.

Rulemaking Process:

Staff initiated review of the rules in chapter 480-121 WAC, and WAC 480-120-052 and WAC 480-120-058 in compliance with the Governor's Executive Order 97-02, which requires agencies to review their rules for clarity, intent and statutory authority, need, effectiveness and efficiency, coordination, cost, and fairness.

On December 22, 1999, the Commission filed a Preproposal Statement of Inquiry (CR-101) with the Office of the Code Reviser to initiate review of the Commission's rules in chapter 480-121 WAC relating to registration, competitive classification, and price lists of telecommunications companies. On August 13, 2001, the Commission sent a notice of opportunity to file comments and notice of workshop to all interested persons. The notice included a request for comments on WAC 480-120-052, prepaid calling services, and WAC 480-120-058, protection of customer prepayments.

The Commission solicited written comments from all interested persons, and held stakeholder workshops on February 15, 2000, April 18, 2000, and September 6, 2001, to discuss written comments received, gather additional comments, and discuss suggested changes. Following the workshops, Staff received additional written comments and began redrafting the rules. The Commission mailed another request for written comments on the redrafted rules on October 2, 2001.

On November 5, 2001, the Commission directed the Commission Secretary to file a Notice of Proposed Rulemaking (CR-102) with the Code Reviser. The Commission mailed to interested persons a copy of the CR-102 and the proposed rules with a comment due date of November 28, 2001.

In response to comments on the proposed rules, Staff redrafted WAC 480-121-063 (3) to clearly identify waivers of regulatory requirements that are granted to all competitive telecommunications companies. WAC 480-121-063 (3) reads as follows:

- (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 WAC 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.

On December 7, 2001, the Commission solicited additional written comments by December 21, 2001, from interested persons regarding the proposed rules to be considered for adoption. With the notices, comments by Qwest and Verizon to the rules submitted on November 5, 2001 and December 7, 2001, are outlined below along with Staff responses.

Qwest

1. WAC 480-121-020 (3) appears to be written in response to RCW 80.36.350 which states the following: The commission may deny registration to any telecommunications company which:
 - (1) Does not provide the information required by this section;
 - (2) Fails to provide a performance bond, if required;
 - (3) Does not possess adequate financial resources to provide the proposed service;
 - (4) Does not possess adequate technical competence to provide the proposed service.

Qwest requests the Commission modify the introduction in WAC 480-121-020 (3) from "may" to "will". Qwest acknowledges that the current rule also states "may" at subsection (4). However, RCW 80.36.350 requires a showing of items one through four above. Once such a showing occurs, the Commission may approve an application for registration or may deny such if the showing is inadequate. Qwest does not believe RCW 80.36.350 provides the latitude proposed at WAC 480-121-020 (3).

Staff response: RCW 80.36.350 does not require the Commission to consider technical competence. RCW 80.36.350 only requires applicants to include name and address of company, name and address of any registered agent, name, address and title of each officer or director, most current balance sheet, latest annual report, if any, and a description of the services it intends to offer. Any additional information is discretionary with the Commission.

2. Qwest requests the Commission modify the introduction in WAC 480-121-040 (2) from "may" to "will". The current rule properly states "will" at subsection (2). Modification of the rule to include "may" suggests that a company's registration may be approved that is inconsistent with the public interest or that fails to meet the criteria outlined in the state statute.

Staff response: Staff disagrees. RCW 80.36.350 does not contain the word "will", rather it uses the word "may", which is permissive.

3. Qwest requests WAC 480-121-040 (3) be stricken as it is outside the scope of the Commission's rulemaking authority. RCW 80.36.350 does not provide for denial of an application for registration based on a finding of this nature. The appropriate remedy available to the Commission is to file a complaint against an alternate operator services company if it finds that the services or charges offered by the company are not consistent with the public convenience and advantage.

Staff response: Staff disagrees. The proposed rule mirrors the language set forth in RCW 80.36.522.

4. Qwest requests that WAC 480-121-060 (2) be deleted. The requirement to comply with federal, state, and local technical regulations is included in subsection (1) (e).

Staff response: Staff agrees and changes have been made.

5. Qwest requests that WAC 480-121-063 (3) (m) be modified to reflect existing 480-80 rules or eliminate until the new rules are adopted. The proposed language in WAC 480-121-063 (m) waives the regulatory requirements in Chapter 480-80 WAC with some exceptions. However the exceptions are not existing rules. WAC 480-80-201 (Use of price lists) through WAC 480-80-242 (Using contracts for services classified as competitive) are proposed WACs that are not yet effective; nor have they been adopted.

Staff response: Staff recognizes the discrepancy and has determined that these rules should not become effective until the tariff rules in Docket U-991301 become effective.

Verizon

1. There appears to be an inconsistency in the draft rules with regard to the review and approval of registration applications. WAC 480-121-020 (3) provides that the Commission may require applicants to show (a) adequate financial resources; (b) technical competence; and (c) compliance with various legal requirements. Likewise, WAC 480-121-040 (2) provides that the Commission may deny a registration application for failure to possess adequate financial resources and/or technical competence. Yet, WAC 480-121-040 (1) allows the Commission's Secretary to grant applications where a Commission application form is used and six items of information are provided. None of these six items expressly covers technical competence or compliance with legal requirements, and the balance sheet and annual report may or may not show adequate financial resources for the proposed new Washington operation.

Staff response: RCW 80.36.350 does not require the Commission to consider technical competence. RCW 80.36.350 only requires applicants to include name and address of company, name and address of any registered agent, name, address and title of each officer or director, most current balance sheet, latest annual report, if any, and a description of the services it intends to offer. Any additional information is discretionary with the Commission.

2. Verizon opposes the first sentence of the last paragraph of WAC 480-121-063 that Staff has added. That sentence purports to use a rule to revoke waivers previously granted by the Commission in competitive classification proceedings. When read together with the second sentence of the paragraph, the intent appears to be to put the burden on the affected companies to reapply for the waivers revoked by the rule. This is an unfair and unlawful approach to revoking waivers. For example, RCW 80.36.320(4) provides that "The commission may revoke any waivers . . . if such revocation . . . would protect the public interest." RCW 80.04.210 provides that the commission may change or rescind its orders "upon notice to the public and the public service company affected, and after opportunity to be heard." In other words, before the Commission can revoke a waiver granted in an order in a competitive classification docket, it must give notice to the affected company, give that company a hearing, and make a finding that the revocation is necessary to protect the public interest. The proposed rule would unlawfully circumvent these due process requirements. Therefore, Verizon suggests deleting the first sentence in the last paragraph of WAC 480-121-063.

Staff response: This provision does not have the suggested effect of revoking all waivers that have been granted to companies. Rather, it substitutes the set of waivers specified in the rule for a standard set of waivers specified in each registration order. The two sets of waivers have approximately the same effect,

as is demonstrated by the fact that Verizon does not identify any specific examples of substantive provisions omitted from the new set of waivers.

The need for this provision arises from the fact that the Commission is substantially reorganizing, renumbering, and revising the rules in chapters 480-80 and 480-120 WAC. It would be difficult and perhaps impossible to reconcile the waiver provisions of a competitive classification order issued up to 17 years ago with the current WAC provisions.

Contrary to the suggestion that this provision has the effect of revoking companies' waivers without due process, the proposed language is actually more likely to protect companies' waivers, because it reauthorizes waivers that would otherwise apply only to repealed rules or prior versions of rules. A waiver exempts a company from a specific rule as that rule existed at the time of waiver; it does not automatically carry over to future changes in the rule. During the course of this rule making and the review of Chapter 480-120 WAC, a specific requirement could be repealed in one section or chapter and reenacted in substantially the same form in another section or chapter. The Commission would not have revoked any waiver of the original provision; rather it simply repealed it. Any company seeking an exemption from that substantive requirement would have to seek a new waiver of the new rule containing that provision. It is precisely this unfair and inefficient result that the Commission avoids by reauthorizing the waivers.

3. Verizon requests that WAC 480-121-060 (2) be deleted. The requirement to comply with federal, state and local technical regulations is included in (1) (e).

Staff response: Staff agrees and changes have been made.

Attachments A and B reflect all changes to the existing rules and are in legislative format. The rules eliminate obsolete rules, reduce preparation time by the applicant and the Commission, express the rules in a clear and concise manner and allow for new technology that is more efficient and effective. Moreover, the rules comply with the Governor's Executive Order. Among other improvements, the rules will streamline the filing process for applications for registration, petitions for competitive classification, and initial price lists, and allow for electronic filings. In addition, the rules substantially reduce the requirements for companies offering prepaid calling services.

Staff recommends the Commission direct the Staff to prepare a Rule Adoption Order for Commissioners' review to adopt, amend, and repeal chapter 480-121 WAC as detailed in Attachment A, and WAC 480-120-052 and WAC 480-120-058 as detailed in Attachment B, to become effective simultaneously with the tariff rules in Docket U-991301.

Attachments

ATTACHMENT A

Chapter 480-121 WAC

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

WAC

<u>480-121-011</u>	<u>Application of rules.</u>
480-121-010	Filing of registration application, competitive classification petition, and price list.
480-121-015	Exemptions from rules <u>in chapter 480-121 WAC.</u>
<u>480-121-016</u>	<u>Additional requirements.</u>
<u>480-121-017</u>	<u>Severability.</u>
<u>480-121-018</u>	<u>Delivery of a filing.</u>
480-121-020	Requirements for <u>applications for registration applications, competitive classification petitions for competitive classification, and initial price lists.</u>
480-121-023	When a supplemental application is required.
480-121-026	Rejection<u>ng</u> of registration application, competitive classification petition, and price list <u>a filing.</u>
480-121-030	Additional information.
480-121-040	Granting or denial of <u>denying petitions for registration.</u>
480-121-050	Cancellations.
480-121-060	Revocation<u>king a</u> of registration.
480-121-061	<u>Classification proceedings <u>General requirements to classify a telecommunications company as competitive or to classify a service provided by a telecommunications company as competitive.</u></u>
480-121-062	<u>Content of <u>Requirements for filing a petition for competitive classification of competitive a telecommunications services and companies.</u></u>
480-121-063	<u>Waiver of <u>Regulatory requirements that may be waived for competitive competitively classified telecommunications companies.</u></u>
480-121-064	<u>Investigations <u>Reclassifying a competitive telecommunications company or service.</u></u>
480-121-070	Petition for competitive classification.

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 Rejectionng 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 tThe 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 N~~(1) The name 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 N~~(34) The names 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) A description of all functionally equivalent or substitute services in the petitioner's definition of the relevant market for the service;
 - ~~(b) The N~~ (b) The names and addresses of all providers of such the services known or reasonably knowable to the petitioner;
 - ~~(c) The P~~ (c) The 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~~ (d) A geographical 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 r~~Regulatory 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.~~

~~(3) 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 is 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~~

ATTACHMENT B

WAC 480-120-052 Prepaid calling services.

~~(1) Prepaid calling services—Defined.~~

~~(a) Prepaid calling services (PPCS) means any transaction in which a consumer pays for service prior to use and the prepaid account is depleted as a consumer uses the service. Prepaid calling services may require the use of an access number or authorization code. The transaction often includes an object the size of a credit card which displays relevant information about the service. These objects are defined as prepaid calling cards.~~

~~(b) This section excludes credit cards and cash equivalent cards. Services provided at pay telephones using these cards are regulated under the provisions of WAC 480-120-138.~~

~~(i) Credit cards: Cards that can be used to make consumer purchases utilizing preapproved bank credit (e.g., Visa, MasterCard). Consumers utilizing such cards to complete pay telephone calls are charged the applicable tariffed coin operator rates on file with the commission for pay phone provider service at that location.~~

~~(ii) Cash equivalent cards: Are cards that may either be purchased for exclusive use at card reader pay telephones or may be used both for consumer purchases and use at card reader pay telephones. Cash equivalent cards are not purchased for the exclusive use through an individual telecommunications provider. Consumers utilizing such cards to complete pay telephone calls are charged the applicable tariffed coin operator rates on file with the commission for pay phone provider service at that location.~~

~~(2) Business office requirements for providers of prepaid calling services.—A company offering prepaid calling services must provide consumers a without charges telephone number staffed by live personnel during regular business hours. The personnel must be sufficient to respond to all service related inquires and must be capable of answering general account related questions. The without charge number business office number may be the same as the technical assistance number required in subsection (3) of this section.~~

~~(3) Technical assistance requirements when providing prepaid calling services. A company offering prepaid calling services must provide consumers a without charge number staffed by live personnel twenty four hours a day, seven days a week. The personnel must be sufficient to respond to all inquires and must be capable of assisting consumers with technical problems or questions related to their service. The without charge number for technical assistance may be the same as the business office number required in subsection (2) of this section as long as the number is staffed twenty four hours a day.~~

~~(4) Billing requirements for prepaid calling services.~~

~~(a) Billing increments must be defined in the company's price list, or tariff and presale document. If a company uses an increment based on a time measurement, the increments must not exceed one minute. If the company bills usage in "unit" measurements, units must clearly be defined using both equivalent dollar amounts and~~

time measurement. Unit billing increments can not exceed the equivalent one minute rate.

(b) Service may be rated only for the actual time a circuit is open that allows for conversation. Conversation time of less than a full billing increment shall not be rounded up beyond that full increment.

(c) Companies may not reduce the value of a PPCS account by more than the charges specified on the prepaid calling card; prepaid calling card packaging; visible display at the point of sale; rates specified in the presale document; or the rate authorized by the commission at the time of purchase. The PPCS may, however, be recharged by the consumer at a rate different from that specified in the initial presale agreement or the last recharge information so long as the rate and surcharges conform with the company's tariff or price list at the time of purchase. The consumer must be informed of the new rates at the time of recharge.

(d) Companies providing prepaid calling services must be capable of providing consumers, upon request, call detail reports at no charge.

(i) Companies may establish verification procedures to confirm the person requesting the call detail was the actual user of the service.

(ii) Call detail reports may be provided orally to a consumer. The company will only be required to provide a written call detail report at no charge if the user requests the information in writing.

(e) Companies providing prepaid calling services must maintain call data for a minimum of thirty months. The data must include the following:

(i) Dialing and signaling information that identifies the inbound access number called or the access identifier;

(ii) The number of the originating phone when the information is passed to the prepaid calling provider;

(iii) The date and time the call was originated;

(iv) The duration or termination time of the call;

(v) The called number; and

(vi) The personal identification number (PIN) and/or account number.

(5) Written disclosure requirements for prepaid calling services - Prepaid calling cards.

(a) Information required on prepaid calling cards. At a minimum the cards must contain the following information:

(i) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must clearly indicate that the company is providing the prepaid telecommunication services.

(ii) The toll-free or without charge number to reach the company's business office;

(iii) The toll-free or without charge number to reach the company's technical assistance office, if different than the business office number;

(iv) The company's toll-free or without charge number used to access the company's service, if applicable;

(v) Authorization code, if required to access the service or if applicable the toll-free number user is required to call to establish access capability;

~~(vi) Expiration date, if applicable. If a card expires after a set period of time from activation, (e.g., ninety days after first use) the company must place a general statement on the card outlining this expiration policy. If an expiration date or expiration policy is not disclosed on the card it will be considered live indefinitely; and~~

~~(vii) Cards must be voided or otherwise physically marked if they were produced as a "nonlive" card so that it is clear to the user that the card is only a sample and is not active. If the card is not disclosed as a nonoperative card, the card is considered live and the issuing company must honor it.~~

~~(b) Prepaid calling card – Presale or point of sale documents. The following information must be legibly printed on the card, packaging, or display visible in a prominent area at the point of sale of the prepaid calling card in such a manner that the consumer may make an informed decision prior to purchase. If the information below is to be provided on a visible display at the point of sale the company must ensure by contract with its retailers or distributors that the information is provided to the consumer.~~

~~(i) Maximum charge per billing increment for prepaid calling card service. If a company charges varying rates for intrastate and interstate calls all applicable rates must be provided. The rates displayed must be no more than those approved in the tariff or price list of the company at the time of retail purchase;~~

~~(ii) Approved charges for all services, and surcharges, fees, and taxes, if applicable and the method of application;~~

~~(iii) Expiration policy, if applicable. If an expiration date is not disclosed the service will be considered live until the prepaid balance is depleted;~~

~~(iv) Recharge policy, if applicable. If an expiration date is not disclosed at the time service is recharged the service will be considered live indefinitely; and~~

~~(6) Written disclosure requirement for prepaid calling service – Other than prepaid calling cards. Presale agreement. The following information shall be provided in a presale document to an applicant prior to consumer prepayment and initiation of service:~~

~~(i) The company's name as registered with the commission. A "doing business as" name may only be used if officially filed with the commission. The language must clearly indicate that the company is providing the prepaid telecommunication services.~~

~~(ii) The toll-free or without charge number to reach the company's business office;~~

~~(iii) The toll-free or without charge number to reach the company's technical assistance office, if different than the business office number;~~

~~(iv) The company's toll-free or without charge number used to access the company's network, if applicable;~~

~~(v) Authorization code, if required to access the service;~~

~~(vi) Maximum charge per billing increment for prepaid calling service. If a company charges varying rates for intrastate and interstate calls all applicable rates must be provided. The rates displayed shall be no more than those approved in the tariff or price list of the company at the time of retail purchase;~~

~~(vii) Approved charges for all services, and surcharges, fees, and taxes if applicable, and the method of application;~~

~~(viii) Expiration date, if applicable;~~

~~(ix) Recharge policy, if applicable.~~

~~(7) Verbal disclosure requirements for prepaid calling services.~~

~~(a) Companies offering prepaid calling service must:~~

~~(i) Provide an announcement at the beginning of each call indicating the time remaining on the prepaid account or prepaid calling card;~~

~~(ii) Provide an announcement when the prepaid account or prepaid calling card balance is about to be depleted. This announcement must be made at least one minute prior to depletion.~~

~~(iii) When requested by a Washington state consumer, the company's business office and technical assistance office must provide the consumer the number for the Washington utilities and transportation commission consumer services line; and~~

~~(iv) Company supervisory personnel must provide dissatisfied applicants or subscribers the commission's toll-free number and address in conformance with WAC 480-120-101.~~

~~(8) Requirements for refund of unused balances.~~

~~(a) When a company has failed to provide service at rates provided in presale documentation or quoted at the time an account is recharged, or that the company has failed to meet technical standards, companies offering prepaid calling services must provide refunds for any unused service or provide equivalent credit in services offered when requested by a customer. Refunds must equal the value remaining on the prepaid calling account or prepaid card. The customer is allowed to choose either the refund or equivalent service option.~~

~~(b) Refund requests received from consumers for reasons other than improper rates or failure to meet technical standards may be made at the sole discretion of and in a form prescribed by the company.~~

~~(9) Performance standards for prepaid calling services. Each company shall ensure that:~~

~~(a) A minimum of ninety-eight percent of all call attempts are completed to the called party's number. Station busies and unanswered calls will be considered completed calls.~~

~~(b) A minimum of ninety-eight percent of all call attempts are completed to a company's business office number. Station busies and unanswered calls will not be counted as completed calls.~~

~~(c) A minimum of ninety-eight percent of all call attempts are completed to the company's technical assistance number. Station busies and unanswered calls will not be counted as completed calls.~~

~~(10) Requirements when a company ceases operations in the state of Washington. When a company ceases operations in the state, the company must:~~

~~(a) Provide the commission with thirty days advance notice in writing.~~

~~(b) At least twenty-one days before termination, provide written notice to customers at the address on file with the company, if applicable, indicating that service will be ending, and explain how customers may receive a refund on any unused service.~~

~~(c) Beginning at least fifteen days before termination, provide oral notice of termination at the beginning of each call originated in Washington, including the date of termination and a number to call for more information.~~

~~(d) Provide information to consumers via its customer service number outlining the procedure for obtaining refunds and continue to provide this information for sixty days from the date company ceases operations.~~

~~(e) Within twenty four hours after ceasing operations, provide the commission and the company's bonding agent a list of all account numbers with unused balances. The list must include the following:~~

~~(i) The identification number used by the company on each account for billing/debit purposes;~~

~~(ii) The unused portion of any prepaid monthly fee on each account;~~

~~(iii) The unused time, stated in units or minutes as applicable on each account and the equivalent dollar amount.~~

~~(11) Compliance requirements for prepaid calling services.~~

~~(a) Printed materials including prepaid calling cards, presale documents, and point of sale documents.~~

~~(i) All materials printed ninety days after the effective date of the rule must comply with provisions of this rule;~~

~~(ii) All printed materials in circulation must comply with this rule within nine months of the effective date of this rule.~~

~~(b) Rules requirements – excluding printed material. Companies providing prepaid calling services within the state of Washington must be in compliance with this rule within ninety days of the effective date of this rule.~~

~~(12) Other regulatory requirements. Companies providing prepaid calling services must comply with all other laws and commission rules relating to provision of telecommunications services unless the company has filed for and received waiver from the commission.~~

~~(13) Penalties for provision of service by an unregistered telecommunications company. When a penalty is imposed upon finding that an unregistered company has provided prepaid calling services within the state of Washington, the commission may assess penalties of up to one hundred dollars per day per violation under RCW 80.04.405 and/or up to one thousand dollars per day per violation under RCW 80.04.380.~~

(1) For the purposes of this section, prepaid calling services (PPCS) means any transaction in which a customer pays for service prior to use and applies only to those services where the number of available minutes decreases as the customer uses the service. Prepaid calling services do not include flat-rated basic local service that is billed in advance of use.

(a) PPCS may require the use of an access number or authorization code.

(b) This section excludes credit cards and cash equivalent cards. Services provided at pay telephones using these cards are regulated under the provisions of WAC 480-120-138.

(2) PPCS providers must provide customers a without-charge telephone number staffed by personnel capable of:

(a) Responding to technical problems or questions related to their service twenty-four hours a day, seven days a week;

(b) Responding to general account-related questions during regular business hours; and

(c) Providing the commission's toll-free number and address to dissatisfied customers as required by WAC 480-120-101.

(3) Billing requirements for PPCS.

(a) A PPCS provider may charge only for the actual time a circuit is open for conversation. The price list or tariff and presale document must define billing increments. The provider must not round up the length of conversation time for less than a full billing increment beyond that full increment.

(i) If a PPCS provider uses an increment based on a time measurement, the increment must not exceed one minute.

(ii) If a PPCS provider bills usage in "unit" measurements, it must clearly define units using both equivalent dollar amounts and time measurement. Unit billing increments cannot exceed the equivalent one minute rate.

(b) At the customer's request, a PPCS provider may add additional time to an existing account in exchange for an additional payment at a rate not to exceed those on file with the commission. The PPCS provider must inform the customer of the new rates at the time of the recharge request.

(4) PPCS providers must maintain the following call-data for a minimum of twenty-four months:

(a) Dialing and signaling information that identifies the inbound access number called or the access identifier;

(b) The number of the originating phone when the information is passed to the PPCS provider;

(c) The date and time the call was originated;

(d) The duration or termination time of the call;

(e) The called number; and

(f) The personal identification number (PIN), or account number.

(5) Disclosure requirements – Prepaid calling services.

(a) A PPCS provider must disclose, prior to the sale, the following information:

(i) The PPCS provider's name as registered with the commission;

(ii) The "doing business as" name as registered with the commission, if applicable;

(iii) The maximum charge per billing increment. A PPCS provider charging varying rates for intrastate and interstate calls must provide all applicable rates. The rates disclosed must be no more than those in its price list or tariff on file with the commission at the time of purchase;

(iv) Charges for all services, including any applicable surcharges, fees, or taxes, and the method of application;

(v) Expiration date, if applicable. If a card expires after a set period of time from activation, the PPCS provider must specify the expiration date on the card. If an expiration date is not disclosed on the card it will be considered unexpired indefinitely; and

(vi) Recharge policy, if applicable. If a PPCS provider does not disclose the expiration date at the time service is recharged, the service will be considered unexpired indefinitely.

(b) A PPCS provider must disclose, at the time of purchase, the following information:

(i) The without-charge telephone number(s) a customer may use to resolve technical problems, service-related questions, and general account-related questions; and

(ii) Authorization code, if required, to access the service or, if applicable, the without-charge telephone number used to establish access capability.

(c) If the PPCS provider is not the entity that packages the services for sale to the public, it must require the company that does so, through a written agreement, to comply with the disclosure requirements of this section.

(6) Time of use disclosure requirements.

(a) The PPCS provider must:

(i) Announce at the beginning of each call the time remaining on the prepaid account or prepaid calling card; and

(ii) Announce the time remaining at least one minute before the prepaid account balance is depleted.

(7) When a PPCS provider has failed to provide service at rates disclosed prior to the sale or quoted at the time an account is recharged, or the PPCS provider has failed to meet performance standards, it must provide refunds for any unused service or provide equivalent service credit when requested by a customer. Refunds or credits must equal the value remaining on the prepaid calling account. The customer may choose either the refund or equivalent service credit option.

(8) Performance standards for prepaid calling services. Each PPCS provider must ensure that:

(a) Customers can complete a minimum of ninety-eight percent of all call attempts to the called party's number. The PPCS provider will consider any busy signals or unanswered calls as completed calls.

(b) Customers can complete a minimum of ninety-eight percent of all call attempts to the PPCS provider. The PPCS provider will not consider any busy signals or unanswered calls as completed calls.

WAC 480-120-058 Protection of customer prepayments.

~~(1) A company that intends to collect customer prepayments must first demonstrate to the commission that it meets (a), (b), or (c) of this subsection:~~

~~(a) The company has a corporate debt rating, according to Standard & Poor's of BBB or higher, or according to Moody's of BAA or higher, with respect to outstanding debt obligation; or~~

~~(b) The company has a performance bond satisfactory to the commission sufficient to cover any customer prepayments; or~~

~~(c) The company has made provision for deposit of customer prepayments in a federally insured interest bearing trust account maintained by applicant solely for customer advances. The prepayments must be deposited in a bank, savings and loan association, mutual savings bank, or licensed escrow agent with access to such funds only for the purpose of refunding prepayments to customers. The funds must be maintained in an account within the state of Washington. In any order granting~~

~~certification, the commission may require either bond or trust account or escrow as a condition.~~

~~(2) Reporting requirements for every bond or trust account.~~

~~(a) Each company collecting customer prepayments must submit to the commission a report within fifteen days after the end of each calendar quarter. The report must contain the following information specific to state of Washington operations:~~

~~(i) Total outstanding balance of customer prepayments at the beginning of the reporting period;~~

~~(ii) Dollar amount of prepaid services sold during the reporting period;~~

~~(iii) Depleted usage of prepaid services during the reporting period; and~~

~~(iv) Total outstanding prepaid service balances at the end of the reporting period.~~

~~(b) Nothing in this rule precludes commission staff from requesting current company financial or operating information at any time.~~

~~(c) A company may petition the commission for a reduction in reporting requirements. The commission may grant or deny the request by letter from the commission secretary.~~

~~(3) Calculation of trust or bond levels.~~

~~(a) The initial level of the bond or trust must comply with the provisions of subsection (1)(b) or (c) of this section.~~

~~(b) The company must adjust the subsequent level of the bond or trust based upon quarterly reports data and the company must notify the commission of that adjustment.~~

~~(4) A company may petition for and the commission may grant waiver of the bond/trust requirement either at the time of registration or at such later time as the company can demonstrate to the commission's satisfaction that it meets standards for waiver of the bond/trust requirement. The petitioning company must provide documentation to the commission in support of the petition. The commission may grant or deny the request by letter from the commission secretary. The commission will evaluate the following to determine whether a waiver of the bond/trust requirement will be granted:~~

~~(a) Certified financial statements establishing adequate financial resources sufficient to provide service to consumers of prepaid telecommunications service;~~

~~(b) Confirmation that the company has received approval for and has been providing comparable services satisfactorily in one or more other state jurisdictions. The documentation must consist of information from the regulatory agency in the other state and must demonstrate that the company has complied with that states' rules and regulations and has provided adequate levels of service for twelve consecutive months;~~

~~(c) Compliance, following registration with the commission, with Washington rules and provision of adequate levels of service for at least twelve consecutive months;~~

~~(d) Documentation that the company has established a bond rating as provided for in subsection (1)(a) of this section;~~

~~(e) Other evidence demonstrating that consumer interests will be adequately protected.~~

As a precondition to registration, the commission may require a telecommunications company to file a performance bond sufficient to cover any prepayments it may collect

from its customers, or order that such prepayments be held in escrow or trust, as stated in RCW 80.36.350.