

Agenda Date: April 24, 2002
Item Number: 2C

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

Staff: Teri Wallace, Rulemaking Team Lead
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Recommendation:

Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioner's review to adopt revisions to adopted rules in chapter 480-121 WAC detailed in Attachment A.

Background:

At the Adoption Hearing on January 9, 2002, the Commission adopted chapter 480-121 WAC. The revisions to the adopted rules that are subject of the March 15, 2002, Supplemental Notice of Proposed Rulemaking (CR-102) delete WAC 480-121-020 (2) (d) and amend WAC 480-121-063 (1) (m).

WAC 480-121-020 (2) (d) required a signed declaration/certification of the accuracy of applications for registration. Removal of this requirement will facilitate electronic filings and have no impact on the Commission's surveillance of the registration, competitive classification, and initial price lists filed by a telecommunications company.

WAC 480-121-063 (1) (m) inadvertently waived rules set forth in WAC 480-80-010 through WAC 480-80-031 that are essential for competitively classified companies. The amended rule will continue application of all rules pertaining to competitively classified telecommunications companies.

On March 15, 2002, the Commission filed 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 April 10, 2002. The only comments received were from Qwest and they are outlined below along with Staff response.

Qwest

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.

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. RCW 80.36.350 does not provide the latitude proposed at WAC 480-121-020 (3). RCW 80.36.350 requires the applicant to demonstrate to the Commission that it possesses adequate financial resources and technical competency to provide the proposed service(s). Such a demonstration is not optional.

In light of the current economic environment as well as the changes witnessed in the telecommunications industry to date, Qwest believes it is critical that the Commission know that new telecommunications entrants possess adequate financial resources and technical competency to provide their proposed service(s). If such entrants do not possess adequate financial resources to provide their proposed services, ratepayers of the suppliers of such inadequate companies will bear the burden of all losses associated with the failure of such companies. Likewise, if such entrants do not possess adequate technical competency to provide their proposed services, the public switch network may be compromised and all Washington residents may suffer.

It is critical that the Commission modify the introduction in WAC 480-121-020 (3) from "may" to "will".

Staff response: Nothing in RCW 80.36.350 mandates the change of "may" to "will" advocated by Qwest. WAC 480-121-040 restates the statutory requirements.

Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioner's review to adopt revisions to adopted rules in chapter 480-121 WAC as set out in attachment A to this memo.

Attachment

ATTACHMENT

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 80.041, 80.044 and chapters 80.04 and 80.36 RCW.

(2) ~~The~~ Price list provisions filed by ~~the~~ telecommunications companies 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 480-121-015 Exemptions from rules in chapter 480-121 WAC.

(1) The commission may grant an exemption from the provision of any rule in this chapter, if consistent with the public interest, with the purposes underlying regulation, and with 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, giving a full explanation of the reason for requesting the exemption.

(3) The commission will assign the request a docket number, if 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.

(5) 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, petitions for competitive classification, and initial price lists.

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

(2) Applications for registration:

(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; and

~~(d) Must include a declaration signed and dated by the applicant or its attorney certifying the accuracy of the filing; and~~ Will be assigned a docket number. All documents subsequently filed in the matter must bear that docket number.

(3) 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) The commission may request that an applicant provide information regarding the applicant's regulatory performance in other states where it operates.

WAC 480-121-026 Rejecting a filing.

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

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

(1) The commission secretary may grant an application for registration without hearing when the application is on a form prescribed by the commission and contains the following:

(a) The name and address of the company;

(b) The name and address of its registered agent, if any;

(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 may deny an application for registration if, after hearing, the commission finds that the application is not consistent with the public 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 480-120-058127, 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 480-121-060 Revoking a 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:

(a) File an annual report;

(b) Pay regulatory fees;

(c) Provide adequate service;

(d) Maintain the telecommunications company's current address and telephone number; or

(e) Comply with all applicable federal, state, and local telecommunications business and technical regulations.

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

(1) Initiation of classification proceedings. A telecommunications company requesting competitive classification must file 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.

(2) Intervention. Any person desiring to participate in a competitive classification proceeding may petition to intervene as provided in WAC 480-09-430.

(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 the proper classification of the affected companies.

(4) Burden of proof. In any competitive classification proceeding, the telecommunications company has the burden of demonstrating that the company or specific service(s) is 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 Requirements for filing a petition for competitive classification of a telecommunications service.

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

- (1) The name and address of the petitioning company;
 - (2) The name and telephone number of regulatory contact;
 - (3) A description of the services it offers;
 - (4) The names and addresses of any entities that would be classified as "affiliated interests" of the petitioner as defined in RCW 80.16.010; and
 - (5) 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) A description of all functionally equivalent or substitute services in the relevant market;
 - (b) The names and addresses of all providers of the services known or reasonably knowable to the petitioner;
 - (c) The prices, terms, and conditions under which the services are offered by competitors to the extent known or reasonably knowable to the petitioner;
 - (d) A geographical description of the relevant market;
 - (e) An estimate of the petitioner's 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.

WAC 480-121-063 Regulatory requirements that may be waived for competitively classified telecommunications companies.

- (1) 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)~~ WAC 480-80-101 Tariff requirements through WAC 480-80-143 Special contracts for gas, electric, and water companies;
- (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.

(2) The commission may by order revoke waivers of regulatory requirements if it determines that revocation is necessary to protect the public interest.

(3) In addition, the commission may waive regulatory requirements for telecommunications companies that it has classified as competitive if it determines that competition with the regulatory waiver will serve the same purposes as public interest regulation.

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

After notice and hearing, the commission may reclassify any competitive telecommunications company or service if it determines that reclassification would protect the public interest. The telecommunications company must demonstrate that the existing competitive classification is proper and consistent with the public interest.