

6 In this docket, to avoid unnecessary duplication, the Commission designates the discussion in this order as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda presented at the adoption hearing and at the open meetings where the Commission considered whether to begin a rulemaking and whether to propose adoption of specific language. Together, the documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

7 **REFERENCE TO AFFECTED RULES:** This Order repeals the following sections of the Washington Administrative Code:

WAC 480-121-010	Filing of registration application, competitive classification petition, and price list.
WAC 480-121-023	When a supplemental application is required.
WAC 480-121-030	Additional information.
WAC 480-121-050	Cancellations.
WAC 480-121-070	Petition for competitive classification.
WAC 480-120-052	Prepaid calling services.
WAC 480-120-058	Protection of customer prepayments.

8 This Order amends the following sections of the Washington Administrative Code:

WAC 480-121-015	Exemptions from rules.
WAC 480-121-020	Requirements for registration applications, competitive classification petitions, and price lists.
WAC 480-121-026	Rejection of registration application, competitive classification petition, and price list.
WAC 480-121-040	Grant or denial of registration.
WAC 480-121-060	Revocation of registration.
WAC 480-121-061	Classification proceedings.
WAC 480-121-062	Content of petition for classification of competitive telecommunications services and companies.
WAC 480-121-063	Waiver of regulatory requirements for competitive telecommunications companies.
WAC 480-121-064	Investigations.

9 This Order adopts the following sections of the Washington Administrative Code:

WAC 480-121-011	Application of rules.
WAC 480-121-016	Additional requirements.
WAC 480-121-017	Severability.
WAC 480-121-018	Delivery of a filing.
WAC 480-120-127	Protecting customer prepayments.
WAC 480-120-264	Prepaid calling services.

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PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on December 23, 1999, at WSR # 00-02-010.

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ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL

STATEMENT: The statement advised interested persons that the Commission was considering entering a rulemaking on a comprehensive review of chapter 480-121 WAC relating to registration, competitive classification, and price lists of telecommunications companies. In addition, the statement advised interested persons that the Commission would consider review of registration-related rules codified in chapter 480-120 WAC and other chapters. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all regulated telecommunications companies and the Commission's list of telecommunications attorneys as well as the Commission's list of interested persons of telecommunications related rulemakings. The Commission posted the relevant rulemaking information on its internet web site at www.wutc.wa.gov.

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Prior to filing its rule proposal, the Commission solicited written comments and held workshops relating to the content of rules that address registration, competitive classification, and price lists of telecommunications companies, prepaid calling services, and protection of customer prepayments. After considering and incorporating many of the suggestions made by stakeholders, the Commission offered the draft proposed rules for comment.

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MEETINGS OR WORKSHOPS; ORAL COMMENTS: The Commission held three workshops to address movement of rules between chapters, incorporation of advances in technology into the registration process, suggested changes to existing rules, and the renaming of chapter 480-121 WAC. The following companies, organizations, and individuals attended some or all of the workshops: AT&T Communications of the Pacific Northwest, Inc., CenturyTel of Washington, Inc., Electric Lightwave, Inc., GTE Northwest Incorporated and GTE Communications Corporation, Janet Bernadette, Kalama Telephone Company, NEXTLINK Washington, Inc., Public Counsel, Qwest Corporation (Qwest), Sprint Corporation, Tenino Telephone Company, Verizon Northwest, Inc. (Verizon), Washington Independent Telephone Association, Washington Telecommunications Ratepayers Association for Cost-based and Equitable Rates, Whidbey Telephone Company, and WorldCom, Inc. (WorldCom).

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All rules were discussed at the workshops. Items of greatest interest included discussions relating to electronic filing, and registration and competitive classification

requirements. Agreement was reached on most issues raised by various stakeholders. Comments on which agreement was not reached are discussed below.

- 15 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on November 7, 2001, at WSR #01-22-110. The Commission scheduled this matter for oral comment and adoption under Notice WSR #01-22-110 at 9:30 a.m., Wednesday, December 12, 2001, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission. On December 12, 2001, the Commission continued the adoption hearing to 1:30 p.m., Wednesday, January 9, 2002.
- 16 **COMMENTERS (WRITTEN COMMENTS):** During the rulemaking process, the Commission called for six rounds of comments on discussion drafts of rules. Following the notice of Proposed Rulemaking (CR-102), the Commission received written comments from the following companies: Qwest, Verizon, and WorldCom. Agreement was reached on most issues raised by various stakeholders. Comments on which agreement was not reached are discussed below.
- 17 **RULEMAKING HEARING:** The original rule proposal was considered for adoption, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on January 9, 2002, before Chairwoman Marilyn Showalter, and Commissioner Richard Hemstad, and Commission Patrick J. Oshie.
- 18 The Commission heard oral comments from Teri Wallace and Glenn Blackmon representing Commission Staff, Judith Endejan representing Verizon, and Theresa Jensen representing Qwest.
- 19 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** The following suggested change to the original proposal was not adopted for the reasons explained below.
- 20 **WAC 480-121-020(3).** Qwest proposes that the Commission modify the introduction in WAC 480-121-020 (3) from “may” to “will”. Qwest contends that WAC 480-121-020 (3) appears to be written in response to RCW 80.36.350 which states that 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; or (4) does not possess adequate technical competency to provide the proposed service. Qwest acknowledges that the current rule also states “may” at subsection (4). Qwest argues that 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 in WAC 480-121-020 (3).

21 The Commission disagrees with Qwest's statutory interpretation and its proposal. Nothing in RCW 80.36.350 mandates the change of "may" to "will" advocated by Qwest. WAC 480-121-040 restates the statutory requirements. 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

22 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission repealed, adopted, amended the rules in the CR-102 at WSR #01-22-110 with the changes described below.

23 **CHANGES FROM PROPOSAL:** The Commission adopted the proposal with the following changes from the text noticed at WSR # 01-22-110.

24 At the request of Verizon language is added to clarify WAC 480-121-020 relating to the requirements for applications for registration, petitions for competitive classification, and initial price lists.

25 At the request of Verizon WAC 480-121-062 (5) (h) is deleted.

26 Language is revised in WAC 480-120-052 to clarify "Time of use disclosure requirements" in response to comments received by Verizon.

27 WAC 480-121-011 Application of rules is corrected to reference RCW 80.01.040 and chapter 80.04 in its entirety.

28 The Commission renumbered WAC 480-120-052 Prepaid calling services to WAC 480-120-264 and renumbered and retitled WAC 480-120-058 Protection of customer prepayments to WAC 480-120-127 Protecting customer prepayments.

29 Other non-substantive grammar and punctuation changes were made after a final review by the Commission.

30 **SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Supplemental Notice of Proposed Rulemaking (Supplemental CR-102) on March 13, 2002, at WSR #02-07-041. The Supplemental CR-102 carved out two rules from the original proposal filed under WSR #01-22-110. This proposal would delete WAC 480-121-020(2)(d) and amend WAC 480-121-063(1)(m). The Commission scheduled this matter for oral comment and adoption under Notice WSR #02-07-041 at 9:30 a.m., Wednesday, April 24, 2002, in the Commission's Hearing

Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

31 **COMMENTERS (WRITTEN COMMENTS):** Following the Supplemental CR-102, the Commission received written comments from Qwest that addressed issues unrelated to the two rules that are the subject of the Supplemental CR-102.

32 **RULEMAKING HEARING:** The supplemental rule proposal was considered for adoption, pursuant to the notice, at a rulemaking hearing scheduled during the Commission's regularly scheduled open public meeting on April 24, 2002, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner Patrick J. Oshie.

33 The Commission heard oral comments from Teri Wallace, representing Commission Staff, and Lisa Anderl representing Qwest.

34 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** The following suggested changes to the original proposal were not adopted for the reasons explained below.

35 **WAC 480-121-020 Requirements for applications for registration, petitions for competitive classification, and initial price lists.** Qwest reiterates its proposal that the introduction in WAC 480-121-020 (3) be modified from "may" to "will". Qwest maintains that WAC 480-121-020 (3) appears to be written in response to RCW 80.36.350 and does not provide the latitude proposed at WAC 480-121-020 (3). According to Qwest, 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). Qwest asserts that such a demonstration is not optional.

36 The Commission continues to disagree with Qwest's statutory interpretation and its proposal. Nothing in RCW 80.36.350 mandates the change of "may" to "will".

37 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission repealed, amended, and adopted the rules in the CR-102 at WSR #02-07-041.

38 **CHANGES FROM PROPOSAL:** The Commission adopted the proposal with the following changes from the text noticed at WSR #02-07-041.

39 Non-substantive grammar and punctuation changes were made after a final review by the Commission.

40 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC sections 480-121-010, 480-121-023, 480-121-030, 480-121-050, 480-121-070, 480-120-052, and 480-120-058 should be repealed.

41 The Commission determines that WAC sections 480-121-015, 480-121-020, 480-121-026, 480-121-040, 480-121-060, 480-121-061, 480-121-062, 480-121-063, and 480-121-064 should be amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on June 17, 2002.

42 The Commission determines that WAC sections 480-121-011, 480-121-016, 480-121-017, 480-121-018, 480-120-127 and 480-120-264 should be adopted to read as set forth in Appendix A and B, as rules of the Washington Utilities and Transportation Commission, to take effect on June 17, 2002.

ORDER

43 THE COMMISSION ORDERS:

44 WAC sections 480-121-010, 480-121-023, 480-121-030, 480-121-050, 480-121-070, 480-120-052, and 480-120-058 are repealed.

45 WAC sections 480-121-015, 480-121-020, 480-121-026, 480-121-040, 480-121-060, 480-121-061, 480-121-062, 480-121-063, and 480-121-064 are amended to read as set forth in Appendix A, as rules of the Washington Utilities and Transportation Commission, to take effect on June 17, 2002.

46 WAC sections 480-121-011, 480-121-016, 480-121-017, 480-121-018, 480-120-127, and 480-120-264 are adopted to read as set forth in Appendix A and B, as rules of the Washington Utilities and Transportation Commission, to take effect on June 17, 2002.

47 This Order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this _____ day of May, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.