

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of Adopting) DOCKET NO. UT-991737
)
WAC 480-120-071) GENERAL ORDER No. R-474
)
Relating to Service Extensions) ORDER AMENDING AND
) ADOPTING RULE
.....) PERMANENTLY

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission takes this action under Notice WSR # 00-17-168, filed with
the Code Reviser on August 23, 2000. The Commission brings this proceeding pursuant
to RCW 80.01.040, 80.04.160, 80.36.080, 80.36.300.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public
Meetings Act (chapter 42.30 RCW); the Administrative Procedure Act (chapter 34.05
RCW); the State Register Act (chapter 34.08 RCW); the State Environmental Policy Act
of 1971 (chapter 34.21C RCW); and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date this order is
entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** The
purpose of the proposed rule is to maintain and advance the efficiency and availability of
telecommunications service; ensure that customers pay only reasonable charges for
telecommunications service; and promote diversity in the supply of telecommunications
services and products in telecommunications markets throughout the state.

5 The effect of the proposed rule will be to provide customers with extensions of service at
reasonable rates, provide companies with an incentive to include as many customers as is
reasonable on new extensions, provide a more workable process for persons seeking
extensions, and provide cost recovery for companies extending service. The rule also
provides the opportunity for alternative telecommunications technologies, especially
wireless, to satisfy the obligation to provide basic telecommunications service.

6 **REFERENCE TO AFFECTED RULES:** This order amends the following section of
the Washington Administrative Code (WAC):

WAC 480-120-071 - Line Extensions (renamed Service Extensions).

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:**
The Commission filed a preproposal statement of inquiry (CR-101) on November 17,
1999, at WSR # 99-23-110. The statement advised interested persons that the
Commission was considering entering a rulemaking on line extensions and would consider
amending WAC 480-120-071.

8 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL
STATEMENT:** The Commission informed persons of the inquiry into this matter by
providing notice of the subject and the CR-101 served November 19, 1999, to all
registered telecommunications companies, and to approximately 1200 additional persons
who have expressed interest in related matters before the Commission or appeared on lists
of organizations. Some of the lists included local exchange companies;
telecommunications attorneys; County Economic Development Councils; and
representatives of agricultural organizations. In addition to information about the
rulemaking, the notice requested written responses to several issue questions and invited
participation in three public workshops.

9 Pursuant to the November 19, 1999, notice, Commission staff held workshops on
December 15, 1999, in Olympia and January 13, 2000, in Okanogan. Both workshops
were attended by members of the public and local exchange company representatives.

10 The Commission issued a Notice of Rulemaking Workshop and Notice of Opportunity to
File Written Comments on February 18, 2000, to the same list of over 1200 interested
persons as well as to those who had commented as a result of the November 19, 1999
opportunity to file written comments. The February 18 notice contained a draft rule and
the public was invited to comment on the rule.

11 Commission staff conducted a workshop on March 14, 2000, in Olympia with industry
and the public to discuss the draft rule.

12 After March 14, 2000, Commission staff consulted with local exchange company
representatives and the public by telephone, e-mail and meetings for the purpose of
discussing revisions to the draft rule.

13 In compliance with chapter 19.85 RCW, on February 25, 2000, the Commission sent all
registered local exchange companies and the major long-distance carriers a memorandum

and questionnaire concerning the potential economic effects of the draft rule on regulated companies. Subsequent oral and e-mail requests were made to solicit additional information from the Washington Independent Telephone Association (WITA) on behalf of its members.

- 14 On April 12, 2000, at an Open Meeting of the Commission, the Commission took testimony from representatives of the public and local exchange companies on the content of the draft rule and the need for rulemaking on the topic. After testimony was completed the Commission directed the Secretary to file a CR-102 with the Office of the Code Reviser. The Small Business Economic Impact Statement was filed with the original CR-102 and re-filed with the supplemental CR-102.
- 15 The Commission filed a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser on May 2, 2000, and published at WSR # 00-10-086 on May 24, 2000.
- 16 The Commission on May 4, 2000, issued a Notice of Opportunity to Submit Written Comments on Proposed Rule and Notice of Proposed Rule Adoption Hearing to approximately 1200 interested persons. Written comments were requested by May 25, 2000, and the rule adoption hearing was set for June 16, 2000.
- 17 At the June 16, 2000, adoption hearing, the Commission received a staff report, took public testimony, and chose not to adopt the proposed rule. The Commission determined that the general statement that the rule would not apply to developments should be replaced by a list of circumstances under which the rule would not apply.
- 18 **NOTICE OF PROPOSED RULEMAKING:** Commission staff redrafted the portion of the rule concerning developments and on June 22, 2000, the Commission authorized filing a supplemental CR-102.
- 19 Commission staff added a definition section to the draft rule and circulated the revised proposal among the interested local exchange companies and WITA for informal comments in July and August. Based upon those informal comments, additional changes were made to the draft and a Supplemental Notice of Proposed Rulemaking (CR-102) was filed with the Office of the Code Reviser on August 23, 2000, at WSR # 00-17-068. The Notice included the Small Business Economic Impact Statement.
- 20 On the same day the Commission sent a Notice of Opportunity to Submit Written Comments on Proposed Rule and Notice of Proposed Rule Adoption Hearing to over 1200 interested persons. Written comments were requested by September 14, 2000, and the rule adoption hearing set for September 27, 2000.

21 At the adoption hearing on September 27, 2000, the Commission received a staff report and adopted the proposed rule. Representatives of interested local exchange and interexchange companies were present but did not accept an invitation to speak.

BACKGROUND INFORMATION: Service Extensions and Effect on Various Interests.

1. What is the Problem?

22 Applicants for service in rural areas often must pay service extension fees that are substantially higher than the fees (if any) that urban customers must pay. At the same time, the rural applicants often encounter ILECs that have not invested in new distribution plant in such locations. The combination of these two circumstances means that some applicants for service in rural areas do not get service because it is cost prohibitive.

23 In many instances there are groups of people who are without service. Examples range from as small as a dozen households to as large as 175 households. The lack of service means people are without access to 911 or to enhanced 911 services. People without telephone service face difficulties seeking and obtaining employment. Those with school-age children cannot keep in easy contact with teachers and others, and their children may not be able to participate fully in school activities.

24 People in exchanges who do not have a wireline connection typically have no access to wireless telecommunications, or the wireless service that is available is not sufficiently reliable to rely upon for everyday use, let alone in an emergency.

25 Telephone networks are most valuable when everyone is connected. Economists refer to increased participation in a network as a positive externality. Urban ratepayers, for example, receive more value from the network when they can receive calls from rural residents seeking goods and services only available through urban providers. Rural ratepayers receive more value when they can receive calls from urban residents seeking goods and services only available through rural providers. All ratepayers receive value when they can keep in touch with family and friends no matter where they may travel or reside. To the extent some households cannot connect to the telephone network, all customers lose value.

2. What are Service Extensions?

26 Service extensions as defined in the rule are extensions of company distribution plant to a location that is outside any municipal boundary and where no distribution plant of the

extending company exists at the time the extension is requested.¹ This rule applies only in exchange areas where companies have an obligation to serve.²

- 27 Service extensions can be distinguished from other network improvements and customer requested additions.³ Each incumbent company is responsible for maintaining, reinforcing, and improving its network. Authorized rates are established to provide incumbent companies the opportunity to recover the costs of such investment.⁴
- 28 Extensions of less than one-tenth mile are not subject to customer payment under this rule because short extensions have historically been provided without direct customer payment. Existing rates of incumbent companies provide cost recovery for such short extensions and those rates are not affected by this rule.

3. Concise History of Commission Action on Service Extensions

- 29 Service extension cases have confronted this Commission since its inception. As early as 1911, this Commission reported cases concerned with the extension of telephone service. In 1914, noting that “use of the telephone has practically become a common necessity,”⁵ the Commission established a policy of dividing the cost of extension between customer and company. The amount expected of individual customers has varied over the years. The policy of dividing the contribution to cost recovery between the customer directly

¹ The rule permits extension obligations to be met through wireless means under certain circumstances. See (2)(c).

² Under subsection (5) cost recovery under this rule is permitted for cross-boundary extensions when companies with an obligation to serve agree that the cost of the cross-boundary extension would be less than the cost of extension within the applicant’s exchange.

Any local exchange company may provide service in any location in Washington; this rule permits cost recovery through terminating access when a company is obligated to extend service or is willing to provide service across a boundary when that is agreed to be the less expensive means of providing an extension.

³ This rule does not alter the Commission’s decision in In the Matter of Camelot Square Mobile Home Park, UT-960832, Fifth Supplemental Order and Commission Decision and Order (November 25, 1997), and it does not affect the reinforcement obligations of companies when drop pairs are available but no distribution lines are available. In those circumstances, the customer is not responsible for reinforcement costs; the customer is only responsible for the standard hook-up fee and it is the responsibility of the company, using funds collected through established rates, to construct the necessary reinforcement.

⁴ Any company that cannot meet its obligations with the amount of revenue it earns may request a rate increase.

⁵ Annual Report, 1915, Public Service Commission of Washington, p.7.

benefited, and other customers whose benefit is an enhanced network, has remained intact up to today, and is continued in this rule.

4. Whose Interests Are at Stake in Service Extension Reform?

30 **Customers:** Under present circumstances, the general body of customers already contributes to the cost of service extensions because the tariffs of incumbent companies do not recover the entire cost of service extension construction from new customers. The costs not off-set by payments of new customers at the time of construction are recovered by companies through rates. In some cases under this new rule, current customers will contribute more to the cost of service extensions and in other cases they will contribute less than they would have contributed prior to the rule.

31 **Incumbent LECs:** Incumbent local exchange companies (ILECs) are, generally, those companies that provided service to an area on the date of enactment of the Telecommunications Act of 1996.⁶ As a practical matter, this rule affects only areas served by ILECs.

32 ILEC service extension tariffs today usually do not recover the entire cost of construction of service extensions from individuals seeking them. The company recoups the portion of its investment that is not paid by the applicant from the revenue generated by the new customers and from the company's existing rates.

33 Under the new rule, in addition to the applicants customer's contribution for new construction, ILECs may file a terminating access charge tariff providing for dollar-for-dollar recovery of service extension cost not paid by an applicant for service.

34 **Facilities Based CLECs:** Facilities-based competitive local exchange companies (competitively classified local exchange companies that are not incumbents, or "CLECs") are not required to file tariffs or price lists under this rule. CLECs today appear to be concentrated in urban areas and small cities, such as Seattle, Bellevue, Olympia and Spokane. The Commission considers it unnecessary to require CLECs to file a price list on this topic when, as a practical matter, it would serve no purpose and therefore be an unwarranted regulatory requirement.⁷

35 **Reseller CLECs:** Companies that resell existing services are not covered by this rule, as

⁶ See 47 U.S.C. 251(h).

⁷ CLECs have an obligation to serve, as do ILECs, under RCW 80.36.090. See *WUTC v. U S WEST Communications, Inc.*, Docket No. UT-961638, Fourth Supplemental Order Rejecting Tariff Filing (January 16, 1998) at 25.

they do not construct plant and equipment but sell service over equipment constructed by other companies.

- 36 **IXCs:** Interexchange companies, such as AT&T and MCI Worldcom, provide long-distance calling services. These companies pay rates known as access charges to ILECs and CLECs for the use of the network from the switch to the residence or business. IXCs pay originating access to the local exchange company whose customer originates a long distance call and pay terminating access to the LEC that serves the recipient of the long distance call. Access payments are calculated on a per-minute basis and affect the price IXCs charge customers for long distance calls.
- 37 Under this rule, IXCs benefit from the addition of more customers to the network when service extensions are created. At the same time, IXCs will pay somewhat higher access rates to ILECs that recover line extension costs on terminating access.
- 38 **COMMENTERS--WRITTEN COMMENTS:** Written comments on the proposed rule published with the original CR-102 in May, 2000, were received from AT&T; GTE; Washington Independent Telephone Associations (WITA); U S WEST; Washington State Emergency Management Department; Frank and Barbara Phelps; Lori and John Hendon; Swanson Mill Road/Mt. Hull Residents; Jamestown S'Klallam Tribe; and Judith D. Belgrade.
- 39 Written comments on the proposed rule published with the supplemental CR-102 were received from Qwest; WITA; Public Counsel; AT&T; Sprint; Verizon; Edward Sirula; Washington State Emergency Management Department; and John Huston.⁸
- 40 **COMMENTS AT ADOPTION HEARING:** The following persons provided oral comments at the June 16, 2000, adoption hearing. If the Commission rejects the speaker's proposal, reasons for rejection are stated.
- 41 **Qwest:** Theresa Jensen and Douglas N. Owens spoke on behalf of Qwest. Qwest expressed concern that the proposed rule did not apply to all local exchange companies, only those that must file tariffs. Qwest is concerned there may be locations where companies that are not required to file tariffs do provide service, and there would be no requirement for those companies to have a service extension tariff. Qwest believes the Commission should apply the rule to all companies. Response: No such locations have been identified, and the rule applies to all similarly situated situations.

⁸ The comments of John Huston were mis-directed within the agency and were not included in the summary prepared for September 27, 2000. Mr. Huston commented in favor of adoption of the rule.

- 42 Qwest stated its concern that the cost recovery is not tied to rate of return. Response: Other mechanisms are available to companies needing rate-of-return relief.
- 43 Qwest stated that it believes the rule should allow companies to recover the cost of reinforcement to the existing network. Qwest suggested that the rule should be permissive with respect to reinforcement costs. Response: Reinforcement costs are a part of the company's ongoing business operations, and mechanisms do exist for companies to seek rate increases to meet these business expenses.
- 44 Qwest commented that the rule is problematic because it is also a toll carrier, and the cost recovery rate permitted in the rule would apply to toll minutes of other carriers terminating on the Qwest network and to its own toll minutes terminating on its own network. Qwest states it cannot raise its retail toll rates because of competition in that market and would suffer as a result. Response: The charges will apply to all toll providers, and all toll providers are therefore similarly situated. In addition, Qwest continues to be a regulated company that can seek rate increases if it needs relief for allowable expenses.
- 45 Qwest is concerned that a customer could order the least expensive class of service (measured) and pay 20 times that amount but once the customer has a line, switch to flat-rate service. Response: The rule text has been changed to meet this concern. Payment must be made based upon the rate for non-measured service.
- 46 Qwest opposed the requirement that an obligated company consent to a cross-boundary extension. Response: The relationship between carriers and cross-boundary service that the rule establishes is to favor the carrier whose designated service territory includes the location where service is requested. The carrier who has designated the territory as its service territory is obligated to provide the service, unless another carrier — one that does not have the obligation to provide service — wishes to provide cross-boundary service and the first carrier consents. The consent is appropriate to optimize the obligated carriers' ability to build out their service territories and to minimize the overlap or duplication of facilities.
- 47 Qwest believes that by tying the extension obligation to municipal boundaries, the Commission must keep on file at the Commission all of the municipal boundaries in an up-to-date fashion. The Commission could apply the rule to municipal boundaries as they are at the time of adoption, but not as they will be in the future. The Commission is delegating its power to cities because cities can change their boundaries, which would alter the effect of the rule. Response: The Commission delegates no power to cities, but merely links the rule to an easily discernible, independently created legal boundary. Telephone companies currently maintain boundary information for tax collection purposes.

The Commission has no obligation to maintain boundaries in its own files.

48 Qwest believes the rulemaking is unlawful because the proposed rule would require it to change an otherwise valid tariff. Response: This argument has been raised in at least one other rulemaking proceeding, has been rejected on the basis that a rule states a prospective standard, favored by the APA, with which future tariffs must comply. The rejection has been upheld on judicial review.

49 Qwest contends the rule violates 47 U.S.C. § 254(f) and that it is not competitively and technologically neutral as required by the Federal Communications Commission for universal service rules. Response: The rule is not a universal service rule, within the meaning of the statute, so the law does not apply. Even if the law did apply, the rule is technologically neutral because it applies to any technology used to provide service, and it is competitively neutral because it treats all local exchange companies alike and all interexchange companies alike. The Commission therefore rejects Qwest's argument.

50 **AT&T:** Corey Skluzak spoke for AT&T. AT&T will accept the rule.

51 AT&T views the rule as providing a means to basic telephone service to unserved areas which AT&T believes is the essence of universal service. For that reason, AT&T thinks all carriers, not just interexchange (long-distance) carriers should pay for extensions. Response: This rule is designed to meet specific narrow needs. Eventually, an appropriate universal service mechanism may address universal service in a global manner and provide for broader funding as well as broader coverage. Until then, this approach is an appropriate mechanism to meet the narrowly defined circumstance.

52 AT&T stated that this rule is acceptable until the Legislature creates a universal service fund. AT&T should then be able to recoup the money paid under this rule. Response: This is a stand-alone mechanism for funding limited needs. The Commission finds it inappropriate to impose present costs on possible future mechanisms designed to meet future, and not past, telecommunications needs.

53 **WITA:** Terry Vann spoke for WITA. WITA supports the concept of the rule. WITA's legal concerns are similar to those of Qwest, and are stated and considered above. WITA strongly supports what the rule does for customers—it gets them served. WITA appreciates that the rule addresses company compensation.

54 **Residents of Wilderness Lake, Pend Oreille County and Swanson Mill Area Residents, Near Tonasket:** Witnesses from these territories addressed the proposed rule. Frank Phelps and Karen Kochsmeier spoke for the residents. They expressed thanks

to the Commission for addressing the issue and they supported the proposal.

CHANGES TO NOTICE RULE:

1. Evolution of the Rule

55 In the early months of the rulemaking, drafts of this rule evolved significantly as a result of the process described in pages 2-4 and as a result of the formal comments and the many informal discussions with interested persons. The rule published on August 23, 2000, contained considerable changes from the draft rule circulated to interested persons in February 2000, although the thrust remained the same: making extensions available to customers at reasonable rates while providing a specific method for cost recovery for local exchange companies.

56 The changes from the original proposed rule published in May 2000, and the proposed rule filed with the August 23, 2000, CR-102, however, were quite limited. A definition section was added and the portion on developments which concerned us on June 16, 2000, was revised to include greater specificity while retaining the same purpose and effect as in the May 2000 proposed rule. Many of the improvements to the rule were the result of very helpful comments, both formal and informal, from industry representatives.

2. Summary of Reasons for Changes to Noticed Language

57 The following changes were made to the proposed rule by the Commission as part of the adoption of the rule at the September 27, 2000, regularly scheduled Open Meeting.

58 The rule as adopted includes five revisions intended to reduce ambiguity and thereby increase the ease of compliance for companies and ease of administration for the Commission. There are also several grammatical, typographical and style changes that do not affect the meaning of the rule. None of the revisions represents a significant change in philosophy, purpose, or effect.

- A. Subsection (1), "Drop wire": As suggested by WITA, at the beginning of the second sentence, the phrase "For drop wire installed after the effective date of this section" has been inserted, and the phrase "At a minimum" deleted.
Subsection (1): As prompted by WITA, a definition of "Filed" was added.
- B. Subpart (4)(a): As suggested by Century Telephone, language was added to subsection (4)(a) to make explicit the use of terminating access for recovery of service extension costs. In the first sentence, after "service-extension element" and before "in an amount," the amendment "on terminating access" was inserted into the adopted rule.

- C. Subpart (4)(c): At the suggestion of Qwest and WITA, the words “in the public interest” were deleted as surplusage because all Commission action must meet this standard.
- D. Subparts (6)(i) and (j): As prompted by WITA, these subparts are changed and “created” is replaced with “filed” to match the statutory scheme for initiating development.
- E. Subsection (6): As requested by WITA, the last sentence in the first paragraph of subsection 96) is changed to read “Accordingly, local exchange companies may not recover under subsection (4) of this section the costs of extensions to serve the following:” The last sentence of proposed subsection (6) is deleted.

59 **IMPLEMENTATION AND EFFECTIVE DATE:** Implementation of this rule requires certain carriers to file new tariffs. In order to permit carriers to prepare tariffs and to provide sufficient time for consultation with staff, we provide an effective date for this rule of January 15, 2001.

60 Under existing law relating to tariffs, carriers must file new tariffs not later than December 15, 2000, to be effective on January 15, 2001. The timing of the rule’s effect allows carriers adequate opportunity to prepare and file pertinent tariffs for approval so they will be able to apply the new tariffs on January 15, 2001.

ORDER

THE COMMISSION ORDERS:

- 61 (1) WAC 480-120-071 is amended to read as set forth in Appendix A, and shall become a rule of the Washington Utilities and Transportation Commission, to take effect on January 15, 2001, after filing with the Code Reviser pursuant to RCW 34.05.380(2).

- 62 (2) This order and the rule attached to it shall be forwarded to the Code Reviser for filing and publication in the Washington State Register pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington and effective this 4th day of December, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, 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 1, repealed 0.
Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 1, 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.