

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending and Adopting)	DOCKET UT-120451
)	
WAC 480-120-251)	GENERAL ORDER R-570
)	
Relating to Directory Service)	ORDER AMENDING AND ADOPTING RULE
)	PERMANENTLY
.....)	

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 13-06-026, filed with the Code Reviser on February 27, 2013. The Commission has authority to take this action pursuant to RCW 80.01.040 and RCW 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).

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:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission’s reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission’s responses to the comments reflecting the Commission’s consideration of them.

5

OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED
DATE: April 16, 2013
TIME: 8:08 AM
WSR 13-09-051

The Commission amends WAC 480-120-251 to require only that local exchange carriers make basic directory listings available to their local exchange customers by providing those customers with access to electronic listings and making printed directories available to customers who request them. If a carrier chooses to distribute printed directories to all customers, the carrier may not distribute a directory to customers who request not to receive them. There are no differences between the text of the proposed rule as published in the register at WSR # 13-06-026 and the text of the rule adopted. The Commission designates the discussion in this Order, including appendices, as its concise explanatory statement.

- 6 **REFERENCE TO AFFECTED RULES:** This Order amends the following section of the Washington Administrative Code:

Amend WAC 480-120-251 Directory service

- 7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

THEREUNDER: The Commission filed a Preproposal Statement of Inquiry (CR-101) on April 18, 2012, at WSR # 12-09-084. The statement advised interested persons that the Commission was considering entering a rulemaking to modify or eliminate the requirement that local exchange companies provide each customer a copy of a telephone directory for the customer's exchange area, as described in WAC 480-120-251. The Commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered telecommunications companies, the Commission's list of telecommunications attorneys, and the list for all persons interested in rulemaking dockets. The Commission posted the relevant rulemaking information on its Internet website at <http://www.utc.wa.gov/120451>. Pursuant to the notice, the Commission received written comments.

- 8 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on July 18, 2012, at WSR # 12-15-070. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 12-15-070 at 9:30 a.m., Wednesday, September 12, 2012, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park

Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.

- 9 **CONTINUED NOTICE OF PROPOSED RULEMAKING:** The Commission filed a Continuance of the CR-102 on August 24, 2012, at WSR # 12-18-018. The Commission rescheduled this matter for oral comment and adoption under Notice WSR # 12-18-018 at 9:30 a.m., Thursday, October 18, 2012, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission. The comments that the Commission received raised issues that merited further discussion before it considered adopting revisions to the existing rule.
- 10 **WORKSHOP:** On October 12, 2012, the Commission issued a notice to all interested persons in this rulemaking converting the previously scheduled adoption hearing of October 18, 2012, to a stakeholder workshop. The workshop was held on October 18, 2012, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. Participants in the workshop included Dex One Corporation; the City of Seattle Public Utilities (City of Seattle); the Washington Independent Telephone Association (WITA); Toledo Telephone; Frontier Communications Northwest Inc. (Frontier); CenturyTel; the Public Counsel Section of the Washington State Attorney General's Office (Public Counsel); and the Broadband Communications Association.
- 11 **NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING:** The Commission filed a Supplemental CR-102 Notice to WSR # 12-18-018 on December 18, 2012, at WSR # 13-01-068. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 13-01-068 at 1:30 p.m., Thursday, February 14, 2013, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 12 **WRITTEN COMMENTS:** The Commission received written comments from Dex One Corporation, CenturyLink, Frontier, WITA, Public Counsel, City of Seattle, Sightline Institute, and Jeannette Henderson. Summaries of all written comments and

Commission responses are contained in Appendix A, attached to, and made part of, this Order.

- 13 **RULEMAKING HEARING:** The Commission considered the proposed rule for adoption at a rulemaking hearing on February 14, 2013, before Chairman Jeffrey D. Goltz and Commissioner Philip B. Jones. The Commission heard oral comments from Lisa Anderl, representing CenturyLink, Carl Gipson, representing Frontier, Dick Lilly, representing the City of Seattle, Brooks Harlow, representing Dex One, and Lisa Gafken, representing Public Counsel, all of whom reiterated their prior written comments.
- 14 **NOTICE OF SECOND SUPPLEMENTAL PROPOSED RULEMAKING:** The Commission filed a Supplemental CR-102 Notice to WSR # 13-01-068 on February 27, 2013, at WSR # 13-06-026. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 13-06-026 at 1:30 p.m., Thursday, April 11, 2013, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission.
- 15 **WRITTEN COMMENTS:** The Commission received written comments from Dex One Corporation, CenturyLink, Frontier, WITA, Public Counsel, City of Seattle, and Jeannette Henderson. Summaries of all written comments and Commission responses are contained in Appendix A, attached to, and made part of, this Order.
- 16 **RULEMAKING HEARING:** The Commission considered the proposed rule for adoption at a rulemaking hearing on April 11, 2013, before Chairman David W. Danner, and Commissioner Jeffrey D. Goltz. The Commission heard oral comments from Richard Finnigan, representing WITA, Brooks Harlow, representing Dex One, Dick Lilly, representing the City of Seattle, and Lisa Anderl, representing CenturyLink, all of whom reiterated their prior written comments.
- 17 **SUGGESTIONS FOR CHANGE THAT ARE ACCEPTED OR REJECTED.** Written and oral comments suggested changes to the proposed rule. Several commenters expressed concern that the rule as drafted could be interpreted to require a local exchange carrier (LEC) to make directory listings available for other

companies' customers located within the same local calling area, potentially preventing the LEC from complying with the rule if those other companies refuse to share their listing information. The language and intent of the rule do not support such an interpretation. The rule requires only that a LEC make accessible to its customers the directory listings of the LEC's customers. A LEC's inclusion in its directory of listings for other carriers' customers is a matter of separate legal obligations or agreement between carriers.¹

- 18 The Commission also notes that the rule does not prohibit LECs from widely distributing printed directories except to those customers who request not to receive them, despite concerns with the environmental impact of such distribution. The Commission shares these concerns. Subsection (3) of the rule, however, represents an acknowledgement of the First Amendment rights of LECs to engage in commercial speech,² balanced against the rights of their customers not to receive such speech, and reflects the Commission's expectation that LECs likely will not incur the costs to distribute printed directories to all of their customers without a legal obligation to do so. The Commission nevertheless may revisit this issue if LECs continue to broadly distribute printed directories or if the Commission receives complaints from consumers concerning receipt of unwanted directories.
- 19 The remainder of the suggested changes and the Commission's reason for accepting or rejecting the suggested changes are included in the Staff Response column to the Comment Matrix included in Appendix A.
- 20 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend and adopt the rule as proposed in the CR-102 at WSR #13-06-026.
- 21 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-120-251 should be amended to read as set forth in Appendix B, as a rule of the Washington

¹ Incumbent local exchange carriers, for example, have obligations under interconnection agreements with competing local exchange carriers to include the competitor's customers' listings in the incumbent's directory.

² See *Dex Media West, Inc. v. City of Seattle*, 696 F.3d 952 (9th Cir., 2012).

Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the Code Reviser.

ORDER

22 **THE COMMISSION ORDERS:**

23 The Commission amends WAC 480-120-251 to read as set forth in Appendix B, as a rule of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

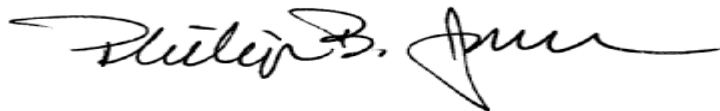
24 This Order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, April 16, 2013.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



DAVID W. DANNER, Chairman



PHILIP B. JONES, Commissioner



JEFFREY D. GOLTZ, 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.

APPENDIX A
Docket UT-120451
Comment Summary Matrix

APPENDIX B
Docket UT-120451
WAC 480-120-451