

Agenda Date: April 25, 2001  
Item Number: 2H

**Docket:** UT-010558  
Company Name: All Telecommunications Companies Providing Local Exchange, Private Branch Exchange, Centrex and Private Line Service

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**Recommendation:**

Adopt an emergency rule, WAC 480-120-083, concerning Cessation of Certain Telecommunications Services, and direct the Executive Secretary to file the rule immediately with the Code Reviser.

**Background**

The Staff recommendation for adoption of an emergency rule arises from recent cessations of telecommunications services and the increasing likelihood that more cessations will occur in the future. Staff is concerned that cessation of certain services without adequate notice or alternatives in place would harm the public health, safety, and general welfare of the citizens of Washington.

Recent examples of telecommunications companies ceasing service in Washington or presenting a possibility of cessation include:

- In January, 2001, Verizon Select Services exited the Washington State market. The company, which provided local exchange service to approximately 19,000 customers, cooperated with the Commission to see that customers had notice and an opportunity to transfer to other companies. Verizon Select extended the time it provided service to customers in order to permit a smooth transition to other providers. This experience revealed an absence of Commission rules necessary to give guidance to companies ceasing service and providing authority to requires notice and assistance to customers facing the cessation of telecommunications services.
- In late March and early April, 2001, NorthPoint abruptly ceased services with little or no notice to customers, and without any notice to the Commission (and to the commissions of many other states). The abrupt loss of service occurred suddenly as a result of an unsuccessful auction of the company and its customers and equipment on March 22, 2001. NorthPoint entered the auction (held pursuant to orders of the Bankruptcy Court) with optimism that the company would be purchased intact and that service to customers would not be interrupted. When no bids were received that would keep the business intact, it was in less than a week that large portions of its network began to “go dark” and within days service to all

- customers ceased. (See Attached letter from NorthPoint to the Chief of the Common Carrier Bureau, Federal Communications Commission.)
- At least three companies providing business local exchange service in the Seattle area have filed for bankruptcy in the last year. GST Telecommunications and ICG Communications filed for bankruptcy protection last year, and on April 19, 2001, Winstar Communications took the same action. GST was eventually acquired by Time Warner Telecom with no loss of service to customers, and both ICG and Winstar have stated that they expect to continue operations as well. However, there can be no assurance that bankruptcy will not result in a loss of service to some or all customers.
- According to the Spokane Spokesman-Review, Avista Corp. president Gary Ely announced on March 29, 2001 that the company's future does not include telecommunications or other operations unrelated to energy and that it intends to reduce its stake in Avista Communications, which offers business local exchange service in Bellingham, Pullman, Clarkston, Yakima, and Spokane.
- Teligent, Inc., which provides business local exchange service in Seattle, Renton, Bellevue, and Vancouver disclosed on March 30, 2001, that its auditors have expressed "substantial doubt" about its ability to continue as a going concern.
- Convergent Communications announced on April 19, 2001, that it was seeking bankruptcy protection "in order to maximize the value of the company as we work through the restructuring process for our business, which will focus on the sale and/or liquidation of assets." Convergent offers local exchange service in Washington, though it is unclear whether it actually serves any customers here.
- Finally, Staff received an inquiry from an attorney for an unnamed telecommunications provider on April 18 asking if there were any rules governing notice of customers, and cancellation of registration, tariffs and price lists. The attorney stated the company provides "voice services" in Washington and is considering exiting the market.

While the most dramatic examples involve companies shutting down completely, a more likely scenario is one in which a company experiencing financial difficulties or a change in business plans decides to stop providing service in a particular market. A company in that situation would typically attempt to sell its customer base to another company, but that result cannot be guaranteed. A company might terminate its service without notifying its customers, unless required by regulators to do so.

#### Statutory Requirement for Adoption of an Emergency Rule

Adoption of an emergency rule permits the Commission to dispense with the usual notice and comment requirements, and results in a rule that becomes effective at the time it is

filed with the Code Reviser. An emergency rule may be adopted if the Commission finds for “good cause”:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest[.]

RCW 34.05.350(1).

The Commission must find that a delay in adopting the rule would interfere with the accomplishment of the rule’s objective and thereby be contrary to the public interest. The Commission, in its order of adoption, must concisely set out the facts that an emergency exists.

#### The Emergency

The Commission is charged with ensuring that basic telephone service is universally available, including voice grade access to the public switched network and access to emergency services. RCW 80.36.600(6)(b). The Commission is also responsible for ensuring that residential and business telephone subscribers have access to enhanced 911 services. RCW 80.36.555, 560.

A subscriber that is left without dial tone cannot contact 911, call a physician, contact directly any other emergency services, such as fire and police agencies, and cannot conduct business. Centrex and PBX service provide dial tone to many individuals in their offices, where emergencies requiring medical, police, or other emergency assistance may occur.

The Legislature has also required a statewide program of enhanced 911 services. RCW 38.52.500. The success of such a program in preventing harm and preserving the public health, safety, and general welfare depends not only on citizens having dial tone so that they may call 911 for assistance, but also depends upon the 911 services ability to process information rapidly over private lines. A call to 911 that requires a check of the automated location identification (ALI) database to determine the whereabouts of a caller depends upon the public safety answering point’s (PSAP) ability to make a high-speed inquiry over a private line. RCW 38.52.505 (Note on Findings, c 24 § 1, Laws of 1999).

There are other circumstances in which high-speed private lines play a role in preserving the public health, safety, or general welfare. Hospital emergency room physicians use high-speed access to certain internet sites to gain access to necessary information in order to treat patients. On a daily basis in Washington, physicians use high-speed data communications carried over private lines to practice “tele-medicine”, that is, consult with physicians in other locations. The high-speed lines can carry radiological and other images that can be examined as if the consulting physician were examining the image presented to the treating physician.

Large banks, their branches and their data systems are connected by high-speed private lines. Major manufacturers that contribute to the general welfare depend upon high-speed, private line communications to conduct their business, as do financial services providers in addition to banks. Railroad transportation also depends on telecommunication to protect passengers and operators from collision on shared tracks and for accurate dispatch of goods. Many trucking companies now also depend on high-speed telecommunications to control the movement of their fleets. The absence of covered services for some commercial interests could threaten the preservation of the public health, safety or general welfare.

Government services that preserve the public health, safety and general welfare depend upon voice communications and high-speed private line services. Child Protective Services depends upon calls from people with dial tone to 800 numbers for the reporting of abuse and neglect. Temporary assistance to needy families and food stamps applications and processing depend upon high-speed data communications for the processing of both regular and emergency applications for assistance. These are but two examples.

At the local level, in addition to emergency networks for 911, other services depend upon telecommunications. Prospective jurors depend upon telecommunications to determine if they have been called for duty. Volunteer fire departments often rely upon broadcast telephone calls and "beepers" to reach firemen. Burglar alarms are sent via telephone lines to companies which then contact police.

In most instances, there are no services that could substitute for telecommunications and reduce an emergency to an inconvenience. Wireless communication, for example, depends upon private lines that connect cell towers with the public switched telephone network. Even if everyone had access to wireless communications, it is not a substitute for the telecommunications services that, if they were to cease serving subscribers, would result in the loss of public health, safety, or general welfare.

#### The Effect of the Proposed Emergency Rule

The objective of the proposed emergency rule is to provide customers and the Commission with minimal information necessary to take actions, if warranted, that would lessen the possibility of an abrupt cessation of service that would leave customers without alternative service.

All telecommunications companies providing local exchange service, private branch exchange service (PBX), Centrex service, and private line service would come under the ambit of the proposed rule.

A company providing the covered services would be required to:

- Provide service to customers until it complies with the remainder of the rule, unless a customer is delinquent under the terms of WAC 480-120-081.
- Provide written notice to customers of its intention to cease service at least 30 days before it ceases to provide service. The notice must include information that will assist the customer in establishing service with another company, i.e. customer service records and circuit identification information.
- Notify the Commission of intended cessation of service 30 days in advance and provide the number of customers affected and their location by exchange or county and city.
- Provide oral notice of intent to cease service to remaining customers between seven and five business days before ceasing service
- Notify the Commission within 24 hours after ceasing service of the number of customers and their location for which no service change request was received.
- Provide the Commission with copies of material filed with the Bankruptcy Court.
- In addition, companies that are required to give 30 days notice of the intent to cease service are not relieved of any obligations of the public service laws of Washington.
- All other telecommunications companies will be required to assist the commission in efforts to find alternative services for those customers that lose service. In some cases a company may have to serve for up to 45 days a customer that would not otherwise qualify for service under a tariff or price list (for example, a customer may be using a type of Centrex that the company can provide but no longer offers to new customers).
- Providers of underlying equipment and services may have to serve customers for up to 45 days.

The rule would not apply to asynchronous digital subscriber line service (ADSL), although a permanent rule may address these providers. An abrupt cessation of this service, while it may be inconvenient to many and disastrous to some, would not rise to the level of threatening the preservation of the public health, safety, or general welfare. The example of NorthPoint used in this memo was not to make the point that the type of service it provided is one that should be covered, but rather to provide an example of a company that ceased service without giving customers an opportunity to find alternatives.

### **Summary**

Staff recommends adoption of the emergency rule, WAC 480-120-083, concerning Cessation of Certain Telecommunications Services, and that the Executive Secretary file it immediately with the Code Reviser.