

NEW SECTION

WAC 480-121-061 Classification proceedings. (1) Rules of practice and procedure applicable. The rules of practice and procedure before the commission, chapter 480-08 WAC, shall apply generally to proceedings to classify a telecommunications company as a competitive telecommunications company or a service as a competitive telecommunications service.

(2) Initiation of classification proceedings. A telecommunications company shall initiate a classification proceeding by filing a petition with the commission. The commission may initiate a classification proceeding on its own motion by order instituting investigation.

(3) Notice to affected companies and public counsel. The commission shall serve a copy of the petition or its order upon all telecommunications companies which may be affected by the proceeding, and upon the public counsel section of the office of the attorney general. Service by the commission shall be made as provided in WAC 480-08-060(4). Alternatively, the commission may direct petitioner to serve a copy of the petition upon such parties as the commission directs. Service by petitioner shall be made in accordance with WAC 480-08-060(3).

(4) Notice to customers of classification proceeding. The commission may require a telecommunications company to give notice of the pendency of the classification proceeding. The commission shall determine the manner and distribution of notice.

(5) Appearances and intervention. Any person desiring to participate in a classification proceeding may petition to intervene as provided in WAC 480-08-070.

(6) Commission may require appearance. In any classification proceeding the commission may require all regulated telecommunications companies potentially affected by the proceeding to appear as parties to determine their classification.

(7) Burden of proof. In any classification proceeding, the telecommunications company shall have the burden of demonstrating that the company or services at issue are subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include, but are not limited to:

(a) The number and size of alternative providers of services;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

A telecommunications company will not be classified as competitive unless it demonstrates that the telecommunications services it offers are subject to effective competition.

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WAC 480-121-062 Content of petition for classification of competitive telecommunications services and companies. In addition to the requirements of WAC 480-08-050(13), a petition for classification of a competitive telecommunications service or a competitive telecommunications company shall, at a minimum, be accompanied with the following:

- (1) Name and address of the petitioner;
- (2) A description of the services it offers;
- (3) Names and addresses of any entities which would be classified as "affiliated interests" of the petitioner pursuant to RCW 80.16.010;
- (4) A statement of the services the petitioner contends are subject to effective competition, and with respect to each such service the following information shall be provided:
 - (a) Descriptions of all services in the petitioner's definition of the relevant market for the service;
 - (b) Names and addresses of all providers of such services known or reasonably knowable to the petitioner;
 - (c) Prices, terms, and conditions under which such services are offered to the extent known or reasonably knowable to the petitioner;
 - (d) A geographical delineation of the relevant market;
 - (e) An estimate of petitioner's market share and any past or projected change in market share;
 - (f) A description of ease of entry into the market;
 - (g) A statement of whether petitioner has a significant captive customer base and the basis for any contention that it does not;
 - (h) A verifiable cost of service study supporting the contention that the price or rate charged for the service covers its cost. A petition which contends that all of a company's services are competitive and does not seek classification for some services if others are denied classification is exempted from this requirement;
 - (i) The manner by which notice of price list changes will be provided to customers and the commission.

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WAC 480-121-063 Waiver of regulatory requirements for competitive telecommunications companies. (1) The commission may waive in writing regulatory requirements for competitive telecommunications companies if it is determined that competition will serve the same purposes as public interest regulation.

(2) Any telecommunications company seeking competitive classification shall include as part of its petition for classification any requests for waivers of regulatory requirements. Requests for waiver not included in a classification petition shall be granted or denied in writing. The commission reserves the right to set any such request for hearing at its discretion. Any request for waiver of regulatory requirements must include a statement as to how competition will serve the same purposes as public interest regulation.

(3) The commission may revoke waivers of regulatory requirements in the same manner in which they were granted if such revocation would protect the public interest.

NEW SECTION

WAC 480-121-064 Investigations. (1) Information to the commission. The commission may require competitive telecommunications companies or telecommunications companies providing competitive services to submit periodically information relating to the factors set forth in WAC 480-120-027(7).

(2) Reclassification. After notice and hearing, the commission may reclassify any competitive telecommunications company or service if such reclassification would protect the public interest. In any such hearing the burden shall rest on the telecommunications company to demonstrate that the existing classification is proper and consistent with the public interest.

(3) Refunds. If the commission finds after notice and hearing that any class of subscribers to a noncompetitive telecommunications service has paid excessive rates because of below cost pricing of competitive telecommunications services, the commission may order refunds or credits.