

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Amending and Adopting	)	DOCKET A-091124
	)	
	)	GENERAL ORDER R-558
WAC 480-120-999	)	
	)	
Relating to Adoption by reference	)	ORDER AMENDING AND
	)	ADOPTING RULE
	)	PERMANENTLY
.....	)	

**1 STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 10-03-089, filed with the Code Reviser on January 20, 2010. The Commission brings this proceeding 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.

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: March 19, 2010  
TIME: 8:07 AM

WSR 10-07-094

5 To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including Appendix A, as its concise explanatory statement, supplemented where not inconsistent by the staff memoranda preceding the filing of the CR-102 proposal and the adoption hearing. Together, these documents provide a complete but concise explanation of the agency actions and its reasons for taking those actions.

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

Amend	WAC 480-120-999	Adoption by reference
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7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS**

**THEREUNDER:** A preproposal statement of inquiry is not required under RCW 34.05.353, "Expedited rule making."

8 **EXPEDITED RULEMAKING AND ACTIONS THEREUNDER:** The Commission filed notice of Expedited Rulemaking (CR-105) on October 7, 2009, at WSR # 09-20-099. The Notice informed interested persons that the rules were being proposed under an expedited rulemaking process as required by RCW 34.05.353, to amend WAC 480-62; WAC 480-75; WAC 480-93; WAC 480-100; WAC 480-108 and WAC 480-120. The Commission provided notice of its expedited rulemaking to all persons requesting such information pursuant to RCW 34.05.353 and by sending notice to all persons interested in the various industries. The Notice provided interested persons the opportunity to submit written comments to the Commission no later than December 8, 2009. The Commission posted the relevant rulemaking information on its Internet web site at [www.utc.wa.gov/091124](http://www.utc.wa.gov/091124). This rulemaking was initiated to clarify existing language, update adoption by reference dates to reflect current published versions of federal rules and national safety standards and correct typographical, grammatical and punctuation errors.

9 **WRITTEN COMMENTS:** The Commission received one written comment, on behalf of the Washington Independent Telephone Association (WITA), to WAC 480-120-999. Under the expedited rulemaking statute, RCW 34.05.353, if a written notice of objection to the expedited rulemaking is timely filed and is not withdrawn, the notice of proposed expedited rulemaking is considered a statement of inquiry (CR-101). WITA did not withdraw its objection to WAC 480-120-999. Therefore, in order to allow the remaining rules noticed at WSR # 09-20-099 to go forward without

delay, the Commission adopted by separate order the rules noticed at WSR #09-20-099, with the exception of WAC 480-120-999.<sup>1</sup>

10 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on January 20, 2010, at WSR #10-03-089. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 10-03-089 at 1:30 p.m., Thursday, March 11, 2010, 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.

11 **MEETINGS OR WORKSHOPS:** The Commission held no meetings or workshops on this matter.

12 **WRITTEN COMMENTS:** The Commission received one written comment on behalf of WITA in response to the CR-102. The written comment and Commission response is 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 Thursday, March 11, 2010, before Chairman Jeffrey D. Goltz, Commissioner Patrick J. Oshie, and Commissioner Philip B. Jones. No interested person appeared or made oral comments.

14 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should amend the rule as proposed in the CR-102 at WSR # 10-03-089, with the changes described below.

15 **CHANGES FROM PROPOSAL:** The Commission adopts the proposal with the following changes from the text noticed at WSR # 10-03-089:

WAC 480-120-999(4)(b) – Language added to clarify which edition of Title 47 Code of Federal Regulations applies to other sections within WAC 480-120.

WAC 480-120-999(4)(d) – Language added to clarify which edition of Title 47 Code of Federal Regulations is available at the U.S. Government Online Bookstore.

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<sup>1</sup> See General Order R-557. The Order was filed with the Code Reviser on January 14, 2010.

- 16 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-120-999 should be amended and adopted to read as set forth in Appendix B, as a rule of the Washington 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**

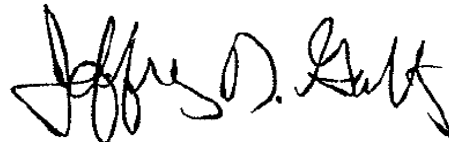
17 **THE COMMISSION ORDERS:**

- 18 The Commission amends and adopts WAC 480-120-999 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).

- 19 This Order and the rule set out in Appendix B, 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, March 19, 2010.

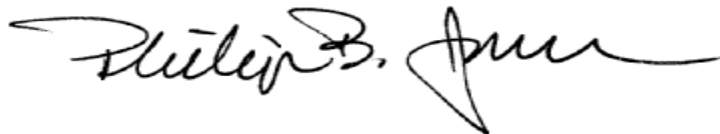
WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION



JEFFREY D. GOLTZ, Chairman



PATRICK J. OSHIE, Commissioner



PHILIP B. JONES, 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 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.

## APPENDIX A

Staff response to comments  
March 2010

Section	Commenter	Comments	Staff Response
WAC 480-120-999(4) and WAC 480-120-999(5)	Finnigan on behalf of the Washington Independent Telecommunications Association (WITA)	<p>WITA notes that there appears to be an anomaly concerning the dates as they relate to the adoption of Title 47 Code of Federal Regulations. In WAC 480-120-999(4), the bulk of the federal regulations are adopted-by-reference as those rules existed on October 1, 1998. However, for the adoption-by-reference for the CPNI rules in WAC 480-120-999(5), the Commission adopts the version in effect on October 1, 2008. Why would the Commission want the most current version of the CPNI rules, and a decade old version of the remainder of the rules? WITA suggests that the date for both rules in Subsections (4) and (5) be modified to be October 1, 2009.</p>	<p><b>Do not change.</b></p> <p>The amended language in WAC 480-120-999(4) and (5) changes references to sections in Title 47 of the Code of Federal Regulations, but does not change the date of the adopted versions of those sections.</p> <p>The anomaly WITA references is intentional. Updated versions of 47 CFR Part 32 do not include all of the accounts that were present in the 1998 version.</p> <p>Nonetheless, companies that are not classified as competitive (such as the WITA members) may already individually petition the Commission for approval of the use of the 2009 version of 47 CFR Part 32 in accordance with the last three sentences of WAC 480-120-359(1)(a).</p> <p>Additionally, the use of Alternate Form of Regulation (AFOR) remedies are also available to companies in Washington state that are not classified as competitive.</p>

**APPENDIX B**

WAC 480-120-999