

Agenda Date: November 5, 2001
Item Number: 4A

Docket No.: **U-991301**
Tariffs, Price Lists, and Contracts and Posting and Publication
Rulemaking

Staff: Fred Ottavelli, Rulemaking Team Lead

Recommendation:

Direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser in Docket U-991301, proposing to repeal and adopt rules as listed in Attachment A, Chapter 480-80 WAC Commission General – Tariffs, Price Lists, and Contracts, and Posting and Publication rules in Chapters 480-90, 480-100, 480-120, and 480-121 as detailed in Attachment B.

Discussion:

On September 17, 1999, the Commission filed a Preproposal Statement of Inquiry (CR-101) with the Office of the Code Reviser to initiate a review of the tariff rules in Chapter 480-80 of the Washington Administrative Code (WAC). A notice dated October 2, 2000, informed stakeholders that the customer notice rule in the chapter would be repealed and adopted in individual industry chapters, and would be revised under this docket. The Commission initiated this review pursuant to the Governor's Executive Order 97-02, which requires agencies to review existing rules. This comprehensive review includes examination of the chapter for readability and content focusing on clarity, intent, statutory authority, need, effectiveness, efficiency, coordination, cost, and fairness. The Commission also considered the effect of legislation, technological change, emerging competition, and changes in market structure.

The proposed rules affect the administration of tariffs, contracts, price lists, and posting and publication requirements for regulated investor-owned electric, gas, telephone, and water companies. All affected companies have been directly notified of this rulemaking.

The Commission solicited written comments from all interested persons and held stakeholder workshops that focused on the price list rules, posting and publication rules, SBEIS, and the complete chapter of rules. The Commission sent draft rules to all affected stakeholders on October 2, 2000, February 7, May 9, July 24, and October 10, 2001.

Specifically, the proposed rules a) streamline filing and format requirements, b) codify current procedures and best-practice options, c) use clear language, d) offer regulated companies greater flexibility to enable them to take advantage of further efficiencies on a case-by-case basis, and e) eliminate unnecessary requirements.

Written comments on this Notice of Proposed Rulemaking may be submitted to the Commission Secretary by Wednesday, November 28, 2001.

Tariffs, Price Lists, and Contracts

The proposed draft of Chapter 480-80 WAC for consideration at the CR-102 open meeting is divided into three sections.

I. General Rules

The rules in this section have been revised for clarity and consistency with contemporary rules.

II. Tariffs and Contracts: Utilities

The rules in this section are applicable to noncompetitive utilities. This rule has been substantially rewritten and reorganized for clarity and to recognize industry and technological changes.

III. Price Lists and Contracts: Competitive Companies and Services

There have been substantial revisions to the rules applicable to competitive companies and services. Use, interpretation, and application of price lists and price list availability to customers are specified in the rule.

On October 10, 2001, the Commission sent a proposed draft of the rules in Chapter 480-80 WAC to interested persons. Comments on the proposed rules and Staff responses follow.

General Comment - Qwest

"Qwest continues to be concerned with the lack of parity in application of rule requirements for competitively classified services offered under price list or contract with the requirements for services offered by competitively classified companies and in WAC 480-80-204 (Price lists format and content). Qwest continues to advocate the Commission adopt rules that affect telecommunications companies in a competitively neutral manner."

Staff Response

The proposed treatment is based on differing legal requirements for competitive services of non-competitive companies (RCW 80.36.330) and services of competitive companies (RCW 80.36.320).

Qwest continues to oppose the cost standard proposed by the Commission Staff within the following proposed rules:

- Banded rate tariff filings: WAC 480-80-112(1)(b)
- Special contracts for telecommunications companies not classified as competitive: WAC 480-80-142(7)(b)(iii)

- Using contracts for services classified as competitive: WAC 480-80-242(4)
- Filing contracts for services classified as competitive: WAC 480-80-241(6)
- Price lists format and content: WAC 480-80-204(6)

Qwest maintains these proposed rules introduce a new cost standard that requires inclusion of the price charged to other telecommunications carriers for any essential function used to provide the service, or any other Commission-approved cost method.

Staff Response

The proposed language requiring imputation of "any essential function" does not require that every function or service be imputed. It requires only imputations of functions that are essential, which could vary by service.

480-80-030 Definitions.

Verizon commented that the definition of price list should be the same as the definition of tariff. Verizon suggests "the proposed definition appears to be part of the Staff's effort to inappropriately deprive price lists of their legal effect."

Staff Response

Differences in the definition of tariffs and price lists result from differing statutory requirements for tariffed services and price-listed services.

480-80-112 Banded rate tariff filings.

Qwest questions what information is required in (1)(c) - Information detailing the revenue impact of the proposed banded rate tariff. Qwest suggests the following language "*(c) Information detailing the revenue impact of the proposed rate change within the banded rate tariff.*"

Staff Disagrees

Subsection (1)(c) is not a change within the banded rate tariff. It is the establishment of an initial banded rate. The applicant must provide information detailing the revenue impact of that proposed banded rate tariff.

480-80-142 Special contracts for noncompetitive telecommunications companies.

Verizon restates the filing requirements in (5) and (6) should be fifteen "business" days.

Staff Response

The 15-day provision establishes a deadline for filing certain contracts after they are executed. Verizon's proposal would lengthen the deadline by an additional week. Staff believes the current proposal of 15 days is a reasonable interval and should be retained.

Qwest suggests (8)(a) Nature, characteristics, and quantity of the service provided; be revised to "*(8)(a) The quantity and type of service provided;*" "Information about the nature and characteristics of the service provided may be proprietary information capable

of being used by other carriers as competitive intelligence and therefore should not be made public. A Company should be allowed to protect this information."

Staff Disagrees

A complete description of the service is necessary to understand what is covered by the contract. There is no evidence that disclosing the nature of the service itself causes any competitive harm.

480-80-201 Use of price lists.

Verizon contends that "in a previous workshop, Staff agreed to add language that would clarify that if a company offers a competitive service by tariff, the company will be subject to all rules and laws applicable to fully regulated services for that tariffed service." They add "Staff agreed to make that clarification, but it does not appear in the latest draft of subsection (2)."

Staff Agrees

The entire company would not be subject to full regulation if it files a tariff for a competitive service. Any other service classified as competitive could still be filed as a price list, and all rules applicable to price lists would apply to that particular service. However, any waivers granted pursuant to RCW 80.36.320(2) would no longer apply, because those waivers were based on the company having no tariffed services.

480-80-202 Interpretation and application of price lists.

Qwest suggests that "the Commission should either regulate price lists or refrain from regulating any aspect of a price list other than as specified in RCW 80.36.330(4)." They think the proposed language creates an ambiguity concerning a formal complaint.

Suggested language: *A price list is not a tariff and is not reviewed or approved by the commission at the time of filing. The commission will, when appropriate, investigate a price list or complain against a price list, in accordance with RCW 80.36.330(4).*

Staff Disagrees

There are other grounds for potential investigation of a price list. It is unclear what is meant by a "full hearing," but the use of this term could preclude the use of other dispute resolution processes that would otherwise be available to the WUTC and customers.

Verizon suggests subsection (1) "inappropriately attempts to deprive price lists of their legal effect and to decide disputes in advance. Subsection (1) of the proposed rule does not (and cannot) change Washington law, which requires telecommunications companies to charge "scheduled" rates and which recognizes the filed rate doctrine. Enacting this subsection would, at best, create confusion. It should not be adopted."

Staff Response

The proposed rule does not render the price list meaningless. It is a binding offer by the company to provide service at the prices, terms, and conditions stated in the price list. Staff disagrees with the assertion that Washington law recognizes that the filed rate doctrine applies to price lists and believes that it is important to recognize fundamental differences in tariffs and price lists under Washington law.

Qwest states that "the Commission should refrain from taking a hard-and-fast position as part of its rules. Such a position does not allow for those circumstances where the Commission may choose to rule differently than the manner specified in the proposed rule. Nor is it necessary for the Commission to include this result as part of its rules. The Commission will rule as it deems appropriate and does not require a rule to enable such a disposition. Should the Commission decide to retain the proposed language, modify subsection (2) as follows:

(2) Upon investigation and a determination that provisions of a price list are conflicting or ambiguous, after full hearing in accordance with RWC 80.04.110, the Commission may construe the conflict or ambiguity in favor of the customer."

Staff Response

The proposed language reflects a basic policy that the Commission would follow, but it does not control the Commission's decision in any particular dispute. It recognizes the need to determine whether an ambiguity or conflict exists in any particular circumstance. Establishing this policy eliminates uncertainty for regulated companies and provides incentives to avoid ambiguous or conflicting offers or price list terms. The specific reference to a full hearing and RCW 80.04.110 should not be used, since it inaccurately implies that the Commission is allowed to act only through a formal complaint and after a full hearing. Omitting the suggested language does not deprive any company of due process rights to which it would otherwise be entitled.

Verizon feels the language suggests that all conflicts would be resolved in favor of the customer. Verizon suggests that conflicts should be resolved through a review of the documents and other relevant evidence. A rule cannot govern every instance, that decision should depend on the facts of a particular case.

Staff Response

This comment does not reflect the actual proposed language. Staff agrees that particular disputes should be decided based on particular facts, and the proposed language is consistent with that approach.

WorldCom states that subsection (2) "is unfair to carriers and is not necessary. This is a matter of customer service which plays a major role in how a competitive company chooses to handle all of its customer concerns, including alleged ambiguities in its price list."

Staff Response

The rule provision does not apply to "alleged" ambiguities; it applies to circumstances in which the Commission determines that an ambiguity exists. Telecommunications companies write price lists and make offers to potential customers. Telecommunications companies are in the best position to ensure that price lists and offers are clear and consistent. It therefore is appropriate to place this responsibility on them. Since the entire provision is dependent on the Commission being asked to resolve a conflict or ambiguity, good customer service will mean that the provision will not need to be implemented.

Qwest objects to the disparate treatment between the detailed tariff format required and the more general filing requirements for price lists. "Regulated companies should be given the same latitude in tariff format and content as competitive providers are given in filing price lists."

Staff Response

The proposed treatment is based on differing legal requirements for competitive services of non-competitive companies (RCW 80.36.330) and services of competitive companies (RCW 80.36.320).

480-80-206 Price lists availability to customers.

WorldCom objects to the requirement to post price lists on a web site, stating it should be voluntary for competitive companies.

Staff Response

The ready availability of information is crucial to the successful operation of a competitive market, since customers cannot make good choices if they do not have good information. Posting of price lists on web sites is a highly efficient method of making information available to customers. It is much less burdensome on companies than requiring companies provide the price list to each customer.

Posting and Publication

The customer notice rule was moved from Chapter 480-80 WAC and drafted as individual posting and publication sections in Chapters 480-90 Gas Operations, 480-100 Electric Operations, 480-120 Telecommunications Operations, and 480-121 Registration, Competitive Classification, and Initial Price Lists of Telecommunications Companies. The rules have been revised to identify in rule posting and publication requirements.

On October 10, 2001, the Commission sent a proposed draft of the posting and publication rules in Chapters 480-90, 480-100, 480-120, and 480-121 to interested persons. Comments on the proposed rules and Staff responses follow.

480-120-193 Posting of tariffs for public inspection and review.

Qwest requests that the requirement to include the address of the tariff web site and the toll-free telephone number on each customer bill and notice, be limited to only customer notices of tariff changes.

Staff has retained the requirement. The purpose of requiring the company to print the address of the company's tariff web site on the bill is to ensure customers can easily find the website where the company will publish its tariff changes.

480-(90, 100, 120)-194 Publication of proposed tariff charges to increase charges or restrict access to services.

NW Energy Coalition, Public Counsel, and WashPIRG oppose permitting notice by publication rather than by requiring direct notice. They suggest that notice by publication, if it is the sole method employed, poses a tremendous risk that affected customers would be unaware of a proposed increase in price or a change in the availability of a tariffed service that affected customers rely upon.

Staff believes that the tariff notice statutes do not give the Commission authority to require individual notice to customers. The Commission can allow companies that wish to provide individual notice to use this as a form of publication, and the proposed rule offers this as an option to companies.

NW Energy Coalition, Public Counsel, and WashPIRG object to the language that requires a utility to "make a good faith effort to publish this information." This language opens the door to interpretation of what constitutes a "good faith effort." "We believe it is simpler for all involved and to the greater benefit of ratepayers to require utilities to serve individual notice of proposed tariff changes."

Staff Agrees

The proposed draft no longer includes this phrase. It was included in earlier drafts when the draft rule required companies to provide notice to a lengthy list of local agencies and organizations. Now companies must only send a notice to organizations that ask to receive such notices.

Qwest and Verizon questioned the published notice requirement. This new published notice requirement would require companies that choose this option to not only notify each customer that would be affected by the proposed change, but would now also require companies to send the notice or press release about the increase to every daily paper within its service territory.

Staff Agrees

Staff has removed the sentence "The company must also send the notice or a press release about the increase to every daily paper within its service territory."

Qwest “opposes a specific requirement of notification to the news editor” of every newspaper, television station, and radio station.

Staff Response

The intent of subsection (2) is publication of the change. Companies must publish in four ways. The subsection (2)(c) requirement is intended to get information about the company’s proposed rate increase before the public via the news media. Staff believes that elimination of this provision would weaken the entire publication element of the rule.

Qwest suggested that subsection (3)(d) and (e) be combined since they accomplish the same purpose.

Staff does not agree that they accomplish the same purpose. Stating just the current and proposed rate for a service that is priced on a usage basis (e.g., per minute) does not convey as much useful information as when it is combined with information about how the change would affect the average customer (i.e., the average customer buying measured ISDN would see an increase of \$ ____).

480-(90, 100, 120)-195 Notice of tariff changes other than increases in recurring charges and restrictions in access to services.

Qwest continues to oppose the notice requirements for local taxes. Local tax changes are not initiated by the Company but are initiated by the local jurisdiction. The Company performs a "pass-through" mechanism by collecting the taxes and remitting them to the appropriate jurisdiction.

Staff has narrowed the scope of this rule. In earlier drafts, companies were required to provide notice of all local tax changes. In the proposed rule that has been limited to changes in local tax “paid by the utility.” We did not eliminate this requirement because we believe that this type of publication is appropriate to notify customers of changes in their bills.

480-120-196 Customer notice requirements—Competitively classified telecommunications companies or services.

WorldCom opposes the requirement of customer notice for price decreases for the following reasons. It forces additional and unnecessary costs of doing business, provides no benefit to customers, takes up space on bill inserts, requires several months lead-time, and delays notice of customer’s decreased rates.

Staff proposes to retain the requirement since in a competitive market it is essential that customers have access to information about price changes, including price decreases. There is considerable benefit to consumers. In addition, the statute requires notice of all price list changes, including price decreases.

To minimize the cost of meeting this requirement for price decreases the draft permits a company to use one of a number of notice methods, including posting the notice on the company's website where the company's price list is available, or advertising the change in a newspaper of general circulation for the affected areas. Neither of these methods imposes much cost or delay.

480-(90, 100, 120)-197 Adjudication proceedings where public testimony will be taken.

Qwest and NW Natural noted that subsections (1) and (3) gave confusing information concerning methods of notification.

Staff has clarified the subsection by the following additional language: "If the company chooses to notice by direct mail, it must mail the notice to all affected customers at least twenty-one days before the first public hearing."

Qwest requested that the language limiting the application of the rule to only one notice be retained.

Staff has added the following language to subsection (1): "Unless otherwise ordered by the commission, the company will not be required to provide notice for the public hearing if, in consultation with staff, it has already notified its customers in accordance with WAC 480-(90, 100, 120)-194."

Staff recommends that the Commission direct the Secretary to file a Notice of Proposed Rulemaking (CR-102) in Docket U-991301 with the Office of the Code Reviser, in order to revise Chapter 480-80 WAC as detailed in Attachment A and adopt the Posting and Publication Rules in Chapters 480-90, 480-100, 480-120, and 480-121 as detailed in Attachment B.

Attachments