

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**Utilities General - Tariffs, Price Lists,
and Contracts - Chapter 480-80 WAC
Parts B - Comprehensive Review,
C - Customer Notice, and D - Price Lists**

DOCKET NO. U - 991301

**COMMENTS OF VERIZON NORTHWEST INC.
AND
VERIZON SELECT SERVICES INC.
ON
PROPOSED TARIFF, PRICE LIST, CONTRACT AND
CUSTOMER NOTICE RULES**

December 20, 2001

I. INTRODUCTION

Verizon Northwest Inc. and Verizon Select Services Inc. (collectively "Verizon") submit these comments on the proposed tariff, price list, contract and customer notice rules pursuant to the Commission's Request for Written Comments on Proposed Rules and Notice of Proposed Rule Adoption Hearing dated December 5, 2001.

II. COMMENTS ON SPECIFIC DRAFT RULES

GENERAL RULES

480-80-030 Definitions.

"Price list"

In prior comments, Verizon raised the concern that the proposed definition of price list appears to be part of the Staff's effort to inappropriately deprive price lists of their legal effect, and it stated that the definition of price list should be the same as the definition of tariff, with the exception of making the distinction that price lists are used by companies or for services that have been competitively classified. In its November 5, 2001 report to the Commission, the Staff said that the disparities between its proposed definitions "result from differing statutory requirements" for tariffed and price-listed services. Staff does not cite the statutes on which it bases its assertion. The fact is, however, that the statutory provisions neither call for nor justify the significant disparities in Staff's proposed definitions.

As stated in its prior comments, Verizon proposes the following definition for "price list":

"Price list" is a document that sets forth terms and conditions of service for companies and services that have been classified competitive, including rates, charges, tolls, rentals, and equipment and facilities, and the manner in which rates and charges are assessed for services provided to customers, and rules and conditions associated with offering service.

It consists of Staff's verbiage for the definition of "tariff" with substitution of "service for companies and services that have been classified competitive" for "regulated services." Staff's verbiage simply describes the contents of the tariff document, i.e., rates, terms and conditions for services. This definition is fully consistent with the applicable statutes - - RCW 80.36.320 and 80.36.330(2). The first statute says simply that a competitively classified company "may file, instead of tariffs, price lists." The second statute merely states that competitively classified services "may be provided under a price list." The statutes do not say that there is any difference in the content of tariffs and price lists.

"Unified business identifier (UBI) number"

Verizon suggests adding the definition of unified business identifier (UBI) number to the definition section.

TARIFFS and CONTRACTS: Utilities

480-80-133 Tariff adoption notice.

As Verizon stated in its June 6, 2001, August 20, 2001 and October 22, 2001 comments, the draft rule makes several assumptions about the nature of changes in ownership, control and company names that may not be accurate and may not warrant the use of an adoption notice. Staff did not address Verizon's points in its November 5,

2001 report. The concerns still exist with the latest version of the draft rules, and Verizon repeats them for the Commission's convenience.

Subsections (1)(a) and (5) would require an adoption notice due to a "change in control" even though there may be no change in the legal entity providing the service and no change in that entity's name. There is no purpose to be served by filing an adoption notice in that circumstance. The language that Verizon proposes avoids that result and instead covers the situations that actually warrant an adoption notice. Verizon proposes a more flexible approach as follows:

- (1) When there is a change in the legal entity providing tariffed telecommunications services, the new entity must either:
 - (a) Put in place its own tariffs, effective with the change in the legal entity providing the services; or
 - (b) File a tariff adoption notice at least one day before the change in the legal entity providing the services.
- (2) A tariff adoption notice must contain, at a minimum, the following:
(Name of Utility) adopts and makes its own in every respect all tariffs, supplements and amendments filed with the Washington Utilities and Transportation Commission by (Name of Previous Utility) prior to (Date).
- (3) The utility adopting the tariff must either:
 - (a) File to incorporate the adopted tariff into its own tariff within sixty days of the date of the filing of the adoption notice; or
 - (b) Refile the tariff under its own name within one year.
- (4) When a telecommunication company changes its legal name, it must refile its tariffs under its new name within one year.
- (5) Until the utility refiles tariffs under its own name, all revisions must include:
 - (a) The prior utility name, at the top of the sheet; and
 - (b) The new name at the bottom of the sheet.

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

As Verizon stated in previous comments, the filing requirements in subsections (5) and (6) should be fifteen "business" days.

PRICE LISTS and CONTRACTS: Competitive Companies and Services

480-80-201 Use of price lists.

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. The Staff agreed to make that clarification, but it does not appear in the latest draft of subsection (2). The second sentence of that subsection should be revised to read as follows:

. . .by tariff, as to that service the company will be subject to . . .

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

This proposed rule should be dropped. It would serve no legitimate or necessary purpose.

Subsection (1) inappropriately attempts to deprive price lists of their legal effect and to decide disputes in advance. Staff's November 5, 2001 report admits this. In it Staff stakes out the position that the filed rate doctrine does not apply to price lists. This is exactly the type of issue that should be decided by the courts - - not by the Commission in the revision of its rules. See Verizon's comments filed on December 12, 2000, March 2, 2001, June 6, 2001, August 20, 2001 and October 22, 2001. Enacting this subsection would, at best, create confusion. It should not be adopted.

Neither should proposed subsection (2) be adopted. It purports to dictate the burden of proof for complaint cases involving price lists. If this issue needs to be addressed at all, it should be covered in the Commission's procedural rules, which are under review in another proceeding. In any event, whether a price list is "ambiguous" or "conflicts" with a contract or some other arrangement depends, in large measure, on the

facts of a particular case. The Commission should not adopt a rule to govern every instance regardless of the underlying facts. Moreover, this subsection would resolve all “conflicts” in favor of the customer. This rule of construction is inappropriate. Conflicts should be resolved through a review of the documents and other relevant evidence; the Commission should not prejudge the resolution of any conflict with an arbitrary rule.

Since neither subsection of this proposed rule is necessary or appropriate, the rule should not be adopted.

CUSTOMER NOTICE

480-120-198 Notice verification and assistance.

Replace "declaration" with "statement" in proposed subsection (1).

480-121-065 Customer notice requirements--Petition for competitive classification of a service.

In proposed subsection (4), replace "declaration" with "statement."