

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION  
COMMISSION

In the Matter of Adopting	)	
WAC 480-120-083	)	DOCKET NO. UT-010558
	)	
Relating to	)	GENERAL ORDER NO. R-485
Cessation of Certain	)	
Telecommunications Services	)	ORDER ADOPTING RULE ON AN
	)	EMERGENCY BASIS
.....	)	

1 This is an emergency rulemaking proceeding to adopt a rule that will become effective when filed. This emergency rule addresses the cessation of certain telecommunications services and provides for notice to customers whose service will cease, and notice to the Commission, to other telecommunications companies, and to the State 911 Program.

2 The Washington Utilities and Transportation Commission is conducting this rulemaking pursuant to RCW 80.01.040 and RCW 34.05.350. This proceeding complies with the Open Public Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05 RCW), the State Register Act (chapter 34.08 RCW), and the State Environmental Policy Act of 1971 (chapter 43.21C RCW).

3 While the emergency rule process set forth in RCW 34.05.350 permits agencies to dispense with the requirements of notice and opportunity to comment, the Commission did provide notice of its consideration of this rule, and did receive and consider written and oral comments on the proposal.<sup>1</sup>

4 The Commission designates the discussion in this order as a concise explanatory statement,<sup>2</sup> supplemented where not inconsistent by the Commission Staff memoranda presented at the open meetings<sup>3</sup> where the Commission considered whether to adopt an emergency rule.

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<sup>1</sup> Commission Staff's Open Meeting Memo dated May 9, 2001, sets out a substantial record of notice and comment for the short time during which this emergency rule was under consideration. Many of the suggestions made by interested persons were incorporated into the adopted rule.

<sup>2</sup> A concise explanatory statement as provided for in RCW 34.05.325 is not required in emergency rulemakings. Because of the level of interest in this rule and the public involvement, the Commission believes that it is appropriate to acknowledge the involvement by describing in a concise explanatory statement how comments affected the development of the rule.

<sup>3</sup> April 25, 2001 and May 9, 2001.

5 The purpose of this rule is to preserve access to emergency services by preserving telecommunications access to emergency services through the state's 911 program. The rule requires that Companies intending to cease local exchange service, private branch exchange service (PBX), Centrex service, and private line service give 30 days' notice to customers, the Commission, other telecommunications companies, and the State 911 Program that certain telecommunications services will cease. The notice will afford customers an opportunity to seek a new telecommunications service provider before access to 911 is lost when service ceases. The notice to telecommunications companies that are customers of the company ceasing service will afford those telecommunications companies the same opportunity to make necessary alternative arrangements. This notice to other telecommunications companies is necessary to protect the services provided to the customers of those companies, some of which services may include local exchange, PBX and Centrex services.

6 The facts requiring emergency action are as follows:

7 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.<sup>4</sup>

8 The Commission has determined that cessation of local exchange service, PBX, Centrex service, and private line service, without notice to customers, would prevent customers from locating alternative providers for these services prior to cessation and therefore would result in the loss of access to 911 services for some period of time. The Commission, through its routine adjudication of telecommunications issues, rulemaking, and other activities related to telecommunications, is aware that initiating new service to a customer can take days, and sometimes weeks, depending on the complexity of the needed service.<sup>5</sup>

9 The Commission has also determined that an immediate threat of abrupt losses of access to 911 service exists. This determination is based on (1) recent abrupt cessations of services in this and other jurisdictions; (2) prior market exits by companies formerly providing service in Washington; (3) recent inquiries from companies considering the cessation of service and attempting to ascertain Commission requirements for such cessation; and (4) the substantial recent changes in the capital market for telecommunications companies that has put many companies

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<sup>4</sup> The Legislature has also required a statewide program of enhanced 911 services. RCW 38.52.500.

<sup>5</sup> See Dockets UT-950200, UT-991358, UT-003013, UT-003120, UT-013019, and WAC 480-120-051, which permits local exchange companies up to five days to connect the simplest business and residence service.

at risk of closure. (These circumstances are addressed in detail in the Commission Staff Open Meeting memos on this subject, on which the Commission bases these findings.) The extent of the risk is substantial and immediate; more than 250,000 businesses, and a smaller number of residences, are served by competitive companies that may fall victim to rapidly changing capital markets.

- 10 The Commission in this rule protects local exchange service, PBX service, and Centrex as three of the four services for which cessation requires notice. These services provide customers with dial-tone access to 911 services and provide automatic number identification (ANI) and automatic location identification (ALI) that allow 911 emergency centers to direct emergency personnel to the location of an emergency.
- 11 Private line service is included as the fourth service protected by this emergency rule because Public Safety Answering Points (PSAPs—the county and city emergency dispatch centers that receive calls to 911) use private line service to receive and route calls, and use them to access ALI data bases.<sup>6</sup> Private line services are also used by hospitals and other emergency services.
- 12 There are no services that could substitute for access to 911 and thereby reduce an emergency to an inconvenience. Wireless communication, for example, does not provide a PSAP with ALI information. Also, wireless communication depends upon private lines that connect cell towers with the public switched telephone network. Access by all affected customers to wireless communications would not substitute for the telecommunications services that, if terminated without notice, would result in the loss of access to 911.
- 13 The Commission Staff memoranda referenced in paragraph 6 describe twelve recent circumstances in which an actual cessation of telecommunications services, or a risk of such cessation, have been brought to the Commission's attention. These factual circumstances have brought to the forefront both the risk to citizens of Washington of losing their telecommunications service, and the lack of Commission rules ensuring access to continued connection of citizens to the services required in emergency situations. The Commission has been studying these concerns in a permanent rulemaking, which is now in progress and which the Commission anticipates will result in adoption of a permanent rule on this topic. This emergency rule is designed to govern those situations posing an immediate risk of harm, only until such time as a permanent rule may be developed and adopted.
- 14 Observing the full requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest because of the resulting exposure to loss of a call to emergency services during that period. The Commission

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<sup>6</sup> See Letter from Robert G. Oening, State 911 Administrator, quoted in the Open Meeting Memo for May 9, 2001.

has provided notice to industry of this proposal, has received written and oral comments, and has used those comments to develop the emergency rule. This process therefore did not deprive interested persons of the reasonable opportunity to comment and participate in the development of the rule.

15 Because access to 911 service may be lost as a result of termination without notice of certain telecommunications services, the Commission determines that an emergency exists and that adoption of an emergency rule is necessary for the preservation of the public health, safety, or general welfare.<sup>7</sup>

16 The Washington Utilities and Transportation Commission finds that an emergency exists. The Commission finds that immediate adoption of a new rule regarding cessation of telecommunications services is necessary. The Commission is currently reviewing its rules governing telecommunications companies in Docket No. UT-990146. During that rulemaking process, the circumstances requiring adoption of the emergency rule will be reviewed to determine whether the emergency rule should be made permanent in its current form or with changes, and the Commission will review the proposal for economic impacts.

### ORDER

17 THE COMMISSION ORDERS That WAC 480-12-083, as set forth in Appendix A, is adopted to take effect as an emergency rule of the Washington Utilities and Transportation Commission pursuant to RCW 34.05.350 and RCW 34.05.380(2), to be effective when filed.

18 THE COMMISSION FURTHER ORDERS That this Order and the rule set out forth in Appendix A, after being first recorded in the order register of the Washington Utilities and Transportation Commission, be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this     day of May, 2001.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

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<sup>7</sup> See May 9, 2001, Open Meeting Memo, n.2.