

Agenda Date: January 9, 2002  
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 Staff to prepare a Rule Adoption Order for Commissioner's review to adopt, amend, and repeal chapter 480-80 WAC relating to Commission General – Tariffs, Price Lists, and Contracts as detailed in Attachment A, and to adopt, amend, and repeal the posting and publication rules in chapters 480-90, 480-100, 480-120, and 480-121 WAC 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 A notice dated October 2, 2000, informed stakeholders that the customer notice rule in the chapter would be repealed and adopted in individual industry chapters.

On November 5, 2001, the Commission directed the Commission Secretary to file a Notice of Proposed Rulemaking (CR 102) with the Code Reviser. On December 5, 2001, the Commission filed a CR-102 with the Office of the Code Reviser to notice new, amended and repealed proposed rules in chapters 480-80, 480-90, 480-100, and 480-120 WAC and WAC 480-121-065. A notice dated December 10, 2001, informed stakeholders of the proposed rule changes and scheduled adoption hearing on January 9, 2002. Further, the notice asked for written comments not later than December 21, 2001.

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 changes, emerging competition, and changes in market structure.

The proposed rules affect the administration of tariffs, contracts, and 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 notice of draft rules to all affected stakeholders on October 2, 2000, and February 7, May 9, July 24, October 10, and December 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.

### **Tariffs, Price Lists, and Contracts**

The proposed draft of Chapter 480-80 WAC (Attachment A) is divided into three sections.

#### **I. General Rules**

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

#### **II. Tariffs and Contracts: Utilities**

The rules in this section are applicable to noncompetitive utilities. Rules have been substantially rewritten and reorganized for clarity. The changes also 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.

The following are comments on the proposed Chapter 480-80 WAC rules and Staff responses.

#### **Comments**

##### **Proposed Cost Standard**

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

- Filing contracts for services classified as competitive: WAC 480-80-241(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 imputation of functions that are essential, which could vary by service.

**WAC 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

Staff continues to believe differences in the definition of tariffs and price lists result from differing statutory requirements (Chapter 80.36 RCW) and are justified.

Verizon asks the Commission to define Unified Business Identifier (UBI) number.

Staff Response

Staff agrees with Verizon's comment and proposes to define the UBI number as follows:

*"Unified Business Identifier (UBI) number" means the standard nine-digit sequential number issued by Washington state and used by all state agencies to uniquely identify a business entity. The Department of Licensing, Department of Revenue, and Secretary of State's Office are authorized to issue UBI numbers.*

**WAC 480-80-112 Banded rate tariff filings.**

Qwest questions what information is required in WAC 480-80-112(1)(c) - Information detailing the revenue impact of the proposed banded rate tariff. Qwest suggests the following language: *Information detailing the potential revenue impact of the proposed banded rate tariff range as well as the revenue impact of the current or proposed rate.*

Staff Response

Staff has incorporated Qwest's suggestion into the proposed language into WAC 480-80-112(1)(c) and (2)(c) as follows: *Information detailing the potential effect*

*on revenue of the proposed banded rate tariff range, as well as the effect on revenue of the current or proposed rate.*

**WAC 480-80-133 (1) and (5) Tariff adoption notice.**

Verizon is concerned any change in control or ownership of a company would require the company to file an adoption tariff notice.

Staff Response

Subsection (1) states: *A utility must file a tariff notice with the commission when either of the following changes **affects an existing tariff**...* . No adoption notice need be filed due to a change in control or ownership if the tariff is not affected.

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

Verizon states 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 WAC 480-80-142(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 Response

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.

**WAC 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." Verizon adds "Staff agreed to make that clarification, but it does not appear in the latest draft of subsection (2)."

Staff Response

Staff did not agree to make the suggested change and recommends against such a change. At the workshop Staff agreed only to consider the concerns raised by

some stakeholders about the effect on a company's regulation of its decision to use a tariff for one or more competitive services. In considering those concerns, Staff concluded that the proposed language was appropriate because it treats all companies that are filing both price lists and tariffs comparably. Waivers granted pursuant to RCW 80.36.320 are appropriate only if all services of the company are offered under price list. Companies that use a mix of price lists and tariffs do not generally receive such waivers, though service-specific waivers may be appropriate in some instances. This rule does not preclude such service-specific waivers.

**WAC 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)." Qwest believes 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).* The Commission cannot resolve a formal customer dispute without a full hearing as provided for in RCW 80.04.110.

Staff Response

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 price list 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.

Qwest offered an additional alternative to subsection (2) as follows:

*In any Commission initiated complaint proceeding under subsection (1), there will be a rebuttable presumption that the conflict or ambiguity should be construed in favor of the customer.*

Staff Response

Staff disagrees. Adding language “In any Commission initiated complaint proceeding ...“ implies that a consumer cannot initiate a complaint.

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. “The Commission should not adopt a rule to govern every instance regardless of the underlying facts.”

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 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) and are justified.

**WAC 480-80-204 Price lists format and content.**

"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).

**WAC 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 to 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 WAC Gas Operations; 480-100 WAC Electric Operations; 480-120 WAC Telecommunications Operations; and 480-121 WAC Registration, Competitive Classification, and Initial Price Lists of Telecommunications Companies. The rules (Attachment B) have been revised to identify in rule the posting and publication requirements.

On December 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 WAC to interested persons. Comments on the proposed public notice rules and Staff responses follow.

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

Public Counsel and 231 other members of the public (see attachment D) submitted comments supporting direct notice to customers 30 days in advance of a proposed tariff change. They believe 30 days advance notice is necessary to allow families the opportunity to make changes to their family budgets and to participate in the public rate-making process.

#### Staff Response

The Commission has concluded, based on legal advice, that the tariff notice statutes do not give it 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.

The fifteen-day prior notice option was added in response to companies seeking to use bill inserts as the means of accomplishing notice. If that is how it is used, then the least amount of notice a customer is likely to receive is approximately ten days.

Puget Sound Energy believes the requirement that a direct notice be mailed to customers a minimum of 15 days prior to the effective date of the proposed revision is impractical. Puget Sound Energy states, “this means that if PSE desired to implement the direct notice alternative using bill inserts, the bill inserts would have to begin 45 days before the effective date of the proposed tariff—15 days before the tariff is even filed! The only “work-around” for this problem would be to use direct mailers to half of our customers.



Direct mail notice, however, is prohibitively expensive. Thus, as PSE has stated repeatedly throughout this two-year process, the minimum timing requirement does not represent a reasonable balancing of the public interest and should be rejected.”

Staff Response

Staff has stated throughout this rulemaking that it believes all customers expect to receive notice before a rate increase is approved. PSE’s proposal is to begin notice upon filing. If this were adopted, only 30-38 percent of its customers would receive notice by the fifteenth day and 40-48 percent by the twentieth day of the bill cycle (information from PSE response to January 29, 2001 staff questionnaire). Staff does not believe this is adequate notice.

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

Karen Kilpatrick, representing the City of Federal Way would like to see a minimum of 45 days notice for formal hearings.

Staff Response

In most instances, giving customers a minimum of 45 days would not create a problem. The time available for most contested cases allows this. We have not, however, stated a minimum notice requirement in the rule because we believe that the Commission needs the flexibility to conduct contested cases quickly. We believe the way to balance these interests is to determine the appropriate amount of notice in each case during the prehearing conference.

**WAC 480-(90, 100, 120)-197 Notice verification and assistance.**

**WAC 480-(90, 100, 120)-198 Customer notice requirements—Competitively classified telecommunications companies or services.**

Verizon requests the proposed word “declaration” be changed to “statement” in these sections.

Staff Response

Staff has adopted these changes.

Attachments A and B reflect all of the changes to the existing rules and are in legislative format. Attachments C and D incorporate written comments and Staff’s response to those comments. Attachment E describes how rules were moved and changed within and between chapters. Attachment F is a listing of the Staff that participated in this rulemaking.

The rules eliminate obsolete rules, express the rules in a clear and concise manner and allow for new technology that is more efficient and effective. Moreover, the rules comply with the Governor's Executive Order 97-02.

**Conclusion**

In conclusion , Staff recommends that the Commission direct the Staff to prepare a Rule Adoption Order for Commissioner's review to adopt, amend, and repeal chapter 480-80 WAC relating to Commission General – Tariffs, Price Lists, and Contracts as detailed in Attachment A, and to adopt, amend, and repeal the posting and publication rules in chapters 480-90, 480-100, 480-120, and 480-121 WAC as detailed in Attachment B.

Attachments