

September 30, 2003

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VIA HAND DELIVERY

Ms. Carole Washburn
Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 South Evergreen Park Dr. S.W.
Olympia, WA 98504-7250

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

**Re: In the Matter of Comcast Phone of Washington, LLC
Docket No. UT-031459**

Dear Ms. Washburn:

Enclosed for filing please find the original and 20 copies of the following documents in the above-referenced matter:

- Application For Mitigation of Penalties or For Stay Pending Resolution of Petition For Interpretive and Policy Statement or Declaratory Order;
- Declaration of Rhonda Weaver

Please date-stamp and return to us in the enclosed envelope a copy of the filing for our records. If you have any questions, please call me at (206) 340-9381

Sincerely,

GRAHAM & DUNN PC



Nancy E. Dickerson
Assistant to Judith A. Endejan

Enclosures
m28633-448508.doc

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

7 BEFORE THE WASHINGTON UTILITIES AND
8 TRANSPORTATION COMMISSION

9 In the Matter of,) No. UT-031459
10 COMCAST PHONE OF WASHINGTON, LLC)
11) APPLICATION FOR MITIGATION OF
12) PENALTIES OR FOR STAY PENDING
13) RESOLUTION OF PETITION FOR
14) INTERPRETIVE AND POLICY
15) STATEMENT OR DECLARATORY
16) ORDER

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I. INTRODUCTION

On September 15, 2003, Comcast Phone of Washington, LLC ("Comcast Phone" or "Company") received a penalty assessment from the Washington Utilities and Transportation Commission ("Commission") for not filing monthly reports on its service quality pursuant to WAC 480-120-439. Comcast Phone did not interpret this new reporting rule as applying to the Company because it is classified as a Competitive Local Exchange Company ("CLEC"). The Company was first advised on July 17, 2003 that Commission Staff ("Staff") viewed WAC 480-120-439 as applicable to Comcast. Since then, Comcast has had significant communication with Staff to resolve this difference in interpretation. The Company advised Staff that it would seek a ruling from the Commission as to the rule's application or, in the alternative, seek a waiver of the rule, if found to be applicable. Before Comcast Phone could get this pleading filed, it was assessed a penalty, without prior notice or warning.

APPLICATION FOR MITIGATION OF
PENALTIES OR FOR STAY -- 1

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1 None of the criteria this Commission has established prior to imposition of a penalty is
2 present here. Comcast Phone has acted in good faith at all times in questioning the applicability
3 of a new rule, WAC 480-120-439, to the Company because it is a CLEC. Punishment by this
4 Commission for Comcast's differing view is troubling and unreasonable. It suggests that the
5 Commission has accepted the Staff's view of the applicability of the new rule to CLECs without
6 hearing Comcast Phone's argument and evidence as to why the rule does not, and should not,
7 apply to the Company. Therefore, Comcast Phone asks this Commission to stay any penalty
8 pending resolution of a Petition for Interpretive and Policy Statement or Declaratory Order, to be
9 filed by Comcast Phone on or before October 2, 2003. In the alternative, Comcast Phone asks
10 this Commission to withdraw the penalty assessment in its entirety because the underlying basis
11 for it – the application of WAC 480-120-439 – is not a settled question.

12 II. BACKGROUND

13 A. Comcast Phone.

14 Comcast Phone, while a modest operation in comparison with the operations of many
15 Washington ILECs such as Verizon Northwest Inc. and Qwest Communications, Inc. is the
16 leading residential facilities-based CLEC in the state. Historically, the Comcast family of
17 companies ("Comcast") and its predecessors provided primarily cable video and cable Internet
18 services in various states. Following Comcast's merger with AT&T Broadband in November,
19 2002, Comcast added to its portfolio of services the provision of voice-grade telephony services
20 in the State of Washington. Even though Comcast Phone may serve the number of customer
21 lines as some Class A ILECs, Comcast, as discussed below, is a CLEC -- not a "Class A"
22 company. It is not subject to many of the Commission's new service quality performance
23 reporting rules.¹

24
25
26 ¹ As explained in the Declaration of Rhonda Weaver filed herewith, Comcast Phone has been unable to even obtain the number of "total state access lines" from the Commission in order to verify whether Comcast Phone access lines indeed exceed the percentage required for a "Class A" company.

1 **B. The Commission's New Rules Relating to Telecommunications in General.**

2 As the result of a lengthy rulemaking proceeding in Docket No. UT-990146, the
3 Commission released General Order No. R-507 in December 2002, which adopted the rule at
4 issue in this case, WAC 480-120-439, requiring the submission of certain service quality
5 performance reports by Class A companies. The applicability of new WAC 480-120-439 hinges
6 upon whether a local exchange company is a Class A company.² Comcast Phone properly
7 interpreted the term "Class A company" in WAC 480-120-439 as applying only to ILECs and not
8 to CLECs such as Comcast Phone because the only context in which the rules use the terms
9 "Class A" or "Class B" is in relation to an ILEC.

10 In a Staff e-mail sent to Comcast Phone first advising the Company that it might be
11 subject to the new WAC 480-120-439, Staff said that WAC 480-120-302 would settle whether
12 Comcast Phone is a Class A company.³ This rule lays out "accounting requirements for
13 companies not classified as competitive." The other financial records and reporting rules that
14 mention Class A or B also refer only to either companies that are not classified as competitive or
15 that file tariffs. *See*, WAC 480-120-304, 305, 306. The foregoing rules clearly exclude any
16 CLECs that are in all cases competitive and that file price lists (as opposed to the tariffs filed by
17 the ILECs).

18 The distinction in WAC Ch. 480-120 between Class A and Class B parallels the
19 distinction between Class A and B found in the Uniform System of Accounts ("USOA") for
20 Class A and Class B telephone companies. 47 CFR, Part 32. In fact, WAC 480-120-302(2)(a)
21 expressly references Part 32 as a basis for accounting practices applicable to "companies not
22

23 ² Without discussion, General Order No. R-507 revised the definitions in WAC 480-120-021 to a definition for a
24 "Class A" company to mean "a local exchange company with 2% or more of the access lines within the State of
25 Washington." General Order R-507 did not specifically address whether this classification should apply to a CLEC
26 that happens to serve 2% more of the access lines within the State of Washington. New WAC 480-120-021 states
that the definitions in that section apply "unless there is an alternate definition in a specific section or where the
context clearly requires otherwise." (emphasis added)

³ *See* Attachment A to Weaver Declaration.

1 classified as competitive.” Notably, Part 32 applies currently to only “*incumbent local exchange*
2 *carriers as defined in Section 251(h) of the Communications Act.*” 47 C.F.R. § 3211
3 (emphasis added); it does not apply to CLECs such as Comcast.

4 Other references to a Class A company throughout WAC Ch. 480-120 also relate only to
5 ILECs. For instance, WAC 480-120-071(4)(b)(i), the Commission’s new line extension rule,
6 references “Class A companies that have in effect a service-extension tariff.” Accordingly, this
7 rule does not apply to CLECs (which file price lists), but only to ILECs (which file tariffs).

8 No new or existing rule specifically ties any Class A or B classification to a CLEC. The
9 rulemaking made clear to CLECs, including Comcast Phone, that such a tie could not reasonably
10 be anticipated or expected. That is because the Commission clearly recognized that CLECs and
11 ILECs can and should be held to different service performance standards. For instance, WAC
12 480-120-105 addresses performance standards and specifically applies only to ILECs. In
13 comparison, new rule WAC 480-120-439 is silent regarding whether or not it applies to CLECs;
14 therefore, the rule is clear on its face and does not apply to CLECs. Simply put, if the
15 Commission would have wanted WAC 480-120-439 to apply to CLECs, it would have said so.
16 As a practical matter, if the Commission intended to apply the Class A or B classification to
17 CLECs for the very first time (changing the historical use of the term as used throughout WAC
18 480-120), it certainly would have referenced the dramatic change in the rules; especially, in light
19 of the fact the section of the new rules regarding performance standards (WAC 480-120-105) is
20 extremely clear.⁴

21 Comcast Phone had no reason to interpret WAC 480-120-439 as applying to it, given the
22 context in which a Class A label is used, the history of the rulemaking and its very terms.
23 Furthermore, Comcast Phone’s interpretation best promotes Washington legal and regulatory
24

25 ⁴ Indeed, to conclude otherwise is to admit that WAC 480-120-439 is not only inconsistent with the rest of WAC
26 480-120, but also unconstitutionally vague. *State v. Williams*, 144 Wn.2d 197, 26 P.3d, 890 (2001) (the purpose of
the vagueness doctrine is to give the citizens of Washington fair notice of what the law expects of them, and to
protect citizens from arbitrary laws and enforcement).

1 policy that competitive telecommunications companies shall be subject to minimal regulation.
2 RCW 80-36-300(6). Finally, because Comcast Phone has not had a pattern of service quality
3 complaints regarding the service quality measurements which are the subject of the reports called
4 for by WAC 480-120-439, the public interest does not call for imposing this regulatory burden
5 upon Comcast.

6 **C. Comcast Meetings with Commission Staff.**

7 As explained in the Declaration of Rhonda Weaver, Comcast's Director of Governmental
8 and Regulatory Affairs for Washington, Comcast Phone was advised during the summer of 2003
9 that Staff viewed the service quality requirements of WAC 480-120-439 as applying to Comcast
10 Phone because Staff considered Comcast Phone to be a "Class A company." Ms. Weaver
11 explained to Staff Comcast Phone's view that, as a CLEC, it is not a Class A company, as
12 previously discussed in Section B above. Ms. Weaver explained to Staff that the service quality
13 reports required by WAC 480-120-439 require compilation of metrics that Comcast Phone does
14 not currently track and that it cannot currently track. For instance, the installation or activation
15 reports called for by WAC 480-120-439(4) must be tracked "by central office." Comcast's
16 relatively recent entry into the provision of voice-grade local telephony services on a competitive
17 basis has meant that the company's internal measurement and reporting systems, unlike those of
18 ILECs, are not designed to (1) identify all of the voice-grade measurements required by the new
19 rules; (2) distinguish between cable video, cable internet and voice-grade telephony services for
20 all measurements defined by the new rules; or (3) distinguish performance by central offices as
21 required by the new rules. Ms. Weaver advised Staff that it would be expensive and time-
22 consuming for Comcast Phone to modify its systems and train its employees to comply with all
23 of the new reporting rules without any proven or concomitant benefit to Comcast Phone's
24 subscribers or the public interest in general.

25 Staff advised Ms. Weaver to petition the Commission for a declaration that the reporting
26 requirements of WAC 480-120-439 did not apply to CLECs or to seek a waiver. Comcast Phone

1 was in the process of preparing this pleading, which is filed herewith today, at the time it
2 received the penalty in position on September 15, 2003.

3 Under the foregoing circumstances, Comcast Phone should not be assessed a penalty for
4 noncompliance with the service quality reporting rule.

5 **III. LEGAL STANDARD**

6 **A. This Penalty Does Not Satisfy the Commission's Standards.**

7 Under the legal standard established by the Commission, the penalty against Comcast
8 Phone is not appropriate. In *MCI Metro Access Transmission Services, Inc. v. U.S. West*
9 *Communications West, Inc.*, 1999 W.L. 132851 (Feb. 10, 1999), the WUTC articulated eight
10 criteria to guide its decision whether to impose penalties. They are:

- 11 (1) the offending conduct was associated with new requirements of first impression;
- 12 (2) the offending party should have known its conduct constituted a violation;
- 13 (3) the offending conduct was knowing or intentional;
- 14 (4) the offending conduct was gross or malicious;
- 15 (5) repeated violations occurred;
- 16 (6) the Commission previously had found violations;
- 17 (7) the offending conduct improved; and
- 18 (8) remedial steps were undertaken.

19 In this case, these criteria dictate the elimination of the penalty against Comcast Phone.
20 First, as explained above, Comcast Phone's "offending conduct" is associated with requirements
21 of first impression –rule WAC 380-120-439. Comcast Phone had, and continues to have, a good
22 faith, reasonable belief that the new rules apply only to Class A/B ILECs - and not to CLECs. It
23 had sought, and will seek, in good faith to ask this Commission for clarification that its
24 understanding is correct for legal and public policy reasons. These reasons will be laid out in a
25 Petition for Interpretative and Policy Statement, or Declaratory Ruling to be filed on, or before,
26 October 2, 2003 which argues that the Commission should find that WAC 480-120-439 does not

1 apply to Comcast Phone, and, if, ultimately, the Commission determines that WAC 480-120-439
2 is applicable to Comcast Phone, the Company should be exempt from these requirements.

3 With respect to the second, third and fourth criteria, Comcast Phone, given its
4 understanding to date, could not have known that its conduct constituted a violation or that its
5 “offending” conduct was either knowing or intentional, or gross or malicious.

6 Further, no repeated violations have occurred or been found, so the fifth and sixth factors
7 are absent. And, with respect to the seventh criteria, Comcast Phone does not believe that it has
8 engaged in “offending conduct.” Finally, as to the last factor, Comcast Phone will undertake
9 steps to have this Commission clarify further that the definition of Class A companies applies
10 only to ILECs.

11 Imposition of the penalty here is clearly arbitrary and capricious. The Ninth Circuit
12 recently vacated penalties assessed against Verizon Communications on this basis, where
13 Verizon refused to pay for ISP-bound traffic based upon its understanding of the application of
14 an interconnection agreement’s reciprocal compensation provisions. *See, Verizon Northwest Inc.*
15 *v. WorldCom*, 2003 W.L. 1827229 (9th Cir. April 7, 2003).

16 **B. This Penalty Thwarts the Intent of the Legislature that Agencies Educate and Assist**
17 **Before Imposing Penalties.**

18 In addition to failing to meet the criteria for imposition of a penalty, the penalty imposed
19 by the Commission should be mitigated because the leveling of a fine while parties are
20 discussing compliance issues in good faith contravenes the spirit and intent of the Washington
21 State Administrative Procedure Act as revised by the Regulatory Reform Act of 1995
22 (“WSAPA”), RCW A34.05001-43-05.903.

23 When enacting the Regulatory Reform Act of 1995, the Legislature stated that “in order
24 to achieve greater compliance with administrative rules at less cost, that a cooperative
25 partnership exist between agencies and regulated parties that emphasizes education and
26 assistance before the imposition of penalties.” 1995 Wash. Laws 403 § 1(f). The legislative
directive of “education and assistance before penalties” is especially appropriate here because

1 this is the first time that the Commission has ever attempted to subject a CLEC to the service
2 quality reporting rules at issue, and because Comcast Phone was still participating in the
3 educational phase of the process when the penalty was assessed.

4 The Declaration of Rhonda Weaver filed herewith establishes that Comcast Phone was
5 meeting and communicating with Staff in good faith as late as September, 2003. Comcast Phone
6 informed Staff that it intended to ask the Commission for a ruling on whether a CLEC could be
7 considered a Class A company subject to WAC 480-124-39. The parties were clearly still in
8 discussion about compliance issues when the penalty was issued. This action does not comport
9 with the directive of "education and assistance before penalties."

10 Second, during these good faith discussions, Staff never mentioned the possibility of a
11 Commission penalty for an alleged failure to comply with the reporting regulations. If the
12 Commission had truly followed the "education and assistance before penalties" policy, Comcast
13 Phone should have been notified about the possibility long before it was actually assessed.

14 Finally, the inappropriateness of this penalty is highlighted by the fact that Staff has
15 refused to "assist" by failing to provide the data necessary for Comcast Phone to verify even the
16 facts associated with a Class A categorization. In order to determine whether this is proper,
17 Comcast Phone needs the Washington state access line count as required by WAC 480-120-
18 320(1)(c). Subsection (1)(c) of that rule requires the Staff to provide the data necessary for a
19 company to determine if it would qualify as a Class A company, assuming for the sake of
20 argument that such a classification could apply to a CLEC. Staff has this data readily available
21 but has refused to provide it. As a matter of common sense and equity for purposes of
22 calculation, all companies subject to this classification should have access to the same "total state
23 access lines" figure. See Declaration of Rhonda Weaver.

24 Comcast Phone repeatedly asked the Staff, without success, to provide the current
25 Washington state access line count so Comcast Phone could verify its market share percentage in
26 Washington, in the event that the Commission established that CLECs could be classified as a

1 Class A company required to file reports under WAC 480-120-439. Staff suggested instead that
2 Comcast Phone (1) use access line counts from the FCC; (2) use the access line counts from the
3 Washington State Department of Revenue; or (3) file a data request with the Commission for all
4 of the annual reports for all of the telephone companies (including those filed as "confidential")
5 and count the number of access lines itself.⁵ The Commission's refusal to provide this
6 information violates WAC 480-120-302(1)(c) and is also again inconsistent with the "education
7 and assistance" before penalties directive.

8 IV. CONCLUSION

9 For all the foregoing reasons, the penalty assessed against Comcast Phone should be
10 eliminated in its entirety.

11 V. REQUEST FOR A HEARING

12 Unless this Commission decides to withdraw the penalty assessment based upon this
13 application, pursuant to ¶ 2 of the Penalty Assessment, Comcast Phone requests a hearing to
14 contest the occurrence of the violation and the amount of the penalty. A hearing is called for in
15 this case to allow Comcast Phone to explain to the Commission its good-faith interpretation of
16 the new reporting regulations as it applies to Comcast Phone as well as to explain the difficulty
17 of complying with the new rule.

18 RESPECTFULLY SUBMITTED this 30th day of September, 2003.

19 GRAHAM & DUNN PC

20
21 By Judith A. Endejan
22 Judith A. Endejan
23 WSBA# 11016
24 Email: jendejan@grahamdunn.com
25 Attorneys for Comcast Phone of Washington, LLC
26

⁵ The difficulties of obtaining this information from over 500 telephone companies in Washington is self-evident.

1 State of Washington)
2 County of King) .ss
3

4 I have read and understand RCW 9A.72.030 and .080, which proscribe penalties for
5 making false affidavits (printed below) and hereby apply, under oath, for mitigation of Penalty
6 Assessment No. UT-03-1382 for the foregoing reasons.

7 I swear that the foregoing is a true and complete statement of the facts in this case.

8 Rhonda Weaver
9 Signature of Applicant

10
11 SUBSCRIBED AND SWORN TO before me this 29th day of September, 2003.

12 Nancy E. Dickerson
13 (Signature)
14 NANCY E. DICKERSON
(Please print name legibly)

15 NOTARY PUBLIC in and for the State of
16 Washington, residing at Kent, WA.
17 My commission expires: 3/22/05.

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

6 BEFORE THE WASHINGTON UTILITIES AND
7 TRANSPORTATION COMMISSION

8 In the Matter of) Docket No. UT-031459
9 COMCAST PHONE OF WASHINGTON, LLC) **DECLARATION OF RHONDA WEAVER**
10)
11)
12)

13 1. I, Rhonda Weaver, make this Declaration based upon personal knowledge:

14 2. I am the Director of Governmental and Regulatory Affairs for Comcast Phone of
15 Washington, LLC ("Comcast Phone" or "Company"). My business address is 440 Yauger Way
16 SW, Olympia, Washington 98802.

17 3. As part of my duties and responsibilities, I am charged with being knowledgeable
18 about proceedings of interest to Comcast Phone before the Washington Utilities and
19 Transportation Commission ("Commission"). This includes the rulemaking proceeding in
20 Docket No. UT-990146 that significantly revised the rules applicable to telephone operations. I
21 reviewed the new rules with the Company to ensure that our telephony operations would be able
22 to comply, once the rules took effect on July 1, 2003. The Company was able to comply with all
23 rules that we understood to apply to its operations. Neither I nor anyone else within the
24 Company believed that WAC 480-120-439 regarding service quality performance reports applied
25 to Comcast Phone because it is a competitive local exchange company ("CLEC"). We believed
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DECLARATION OF RHONDA WEAVER -- 1

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1 in good faith that this rule only applied to incumbent local exchange companies (“ILECs”) and
2 that only ILECs could be classified as Class A or Class B.

3 4. I was first advised by Commission’s Staff on Thursday, July 17, 2003 that it
4 believed that Comcast Phone is a Class A company under WAC 480-120-302 and that it must
5 comply with the reporting requirements in WAC 480-120-439. *See Attachment A.*

6 5. I was concerned, and disagreed with that position because the rule that the Staff
7 claimed rendered Comcast Phone a “Class A” company (WAC 480-120-302) applies only to
8 “companies not classified as competitive” – and not to Comcast Phone, which is a *competitive*
9 local exchange company. I also could not verify that Comcast Phone could even be classified as
10 a Class A company based upon its percentage of “total state access lines.” This number was in
11 WAC 480-120-302, but it was over four years old.

12 6. I immediately contacted Staff to discuss the service quality reporting issues and to
13 get the data necessary to determine the most recent “total state access lines.” I was told that in
14 order to get this information, I would have to request all company annual reports from the
15 Records Center and compile the information myself. Staff suggested I use data from the state
16 Department of Revenue compiled for payment of E-911 taxes, which showed 3,412,593 access
17 lines as of 12/31/02. *See Attachment B.*

18 7. In order for me to compile an accurate figure for the “total state access lines”
19 based upon filed company annual reports, I would have to request over 500 annual reports from
20 the Records Center. Many of these reports are filed as “confidential.” In order to get these
21 confidential reports, the Commission and Comcast Phone would have to follow the procedure of
22 WAC 480-09-015(7). This would be unduly burdensome for both Comcast Phone. I asked Staff
23 if it could review these reports and come up with an appropriate “total state access lines,” based
24 on the fact that Staff is in the best position to do so because it has better access to these filed
25 company reports than Comcast Phone. Staff could compile the total state access line number by
26 aggregating the raw data. While Staff initially suggested it could compile this figure, Staff

1 subsequently refused to do so. Instead, Staff referred me to another figure from the FCC that
2 calculated "total state access lines" at 3,960,744 (500,000 more lines than the DOR reported).
3 See Attachment C. To date, Comcast Phone has not been able to verify the most recent data with
4 the Commission on "total state access lines." It is possible for the number of access lines
5 reported to either the FCC or DOR to understate or overstate significantly the number of lines.

6 8. Assuming that the number of Comcast Phone access lines exceeds 2% of "total
7 state access lines," Comcast Phone still does not interpret WAC 480-120-439 as applying to it. I
8 explained this position in a series of e-mails (at least 8), telephone meetings (at least 3) and a
9 face-to-face meeting with Staff between July 17, 2003 and early September 2003. I told Staff
10 that Comcast Phone would request a declaratory ruling from the Commission on the applicability
11 of WAC 480-120-439, or, in the alternative, request a waiver, because Comcast Phone cannot
12 currently comply with all of that rule's reporting requirements. Comcast Phone was working on
13 this filing when we received a Penalty Assessment on September 15, 2003. At no time during
14 my communications with Staff did Staff ever indicate it would seek a penalty for Comcast
15 Phone's "noncompliance" with WAC 480-120-439.

16 9. Comcast Phone at no time has knowingly or intentionally violated WAC 480-120-
17 439. In good faith, Comcast Phone contests applicability of the rule to it because it is a CLEC.
18 By a separate filing to be made on or before October 2, 2003, Comcast Phone will ask the
19 Commission to make a ruling on this applicability or to waive it as to Comcast Phone. As
20 explained below, Comcast Phone cannot currently comply with this new service quality reporting
21 rule.

22 10. Historically, the Comcast family of companies (of which Comcast Phone is a part)
23 ("Comcast") and its predecessors have provided primarily cable video and cable Internet
24 services. However, in November 2002, Comcast began to offer voice-grade telephony services
25 as Comcast Phone. As a result of its history, the company's order fulfillment process and
26

1 internal measurement and reporting systems are not like those of ILECs. They cannot track and
2 produce all of the information needed to report under WAC 480-120-439.

3 11. If the Commission finds that Comcast Phone is subject to WAC 480-120-439,
4 Comcast Phone cannot comply with the following sections because of the nature and history of
5 Comcast's operations:

6 (a) WAC 480-120-439(3) ("Missed appointment report"). Because Comcast
7 provides cable video, cable Internet and telephony, its current systems do not, and cannot,
8 separate a missed appointment for just telephony. In order to comply with this rule, Comcast
9 would have to develop enhancements to its current system to produce this report. Comcast
10 Phone has not fully quantified all of the costs associated with these enhancements and Comcast
11 Phone believes they could be significant, possibly into six figures. Further, development would
12 take up to approximately six months to implement. Thereafter, Comcast would have to train and
13 assign employees to produce this monthly report at additional ongoing expense.

14 (b) WAC 480-120-439(4) ("Installation or activation of basic service").
15 Comcast Phone is not subject to the company performance standards for installation or activation
16 of access lines contained in WAC 480-120-105 because it is exempt as a CLEC. Thus, it makes
17 no sense for Comcast Phone to have to report on its performance under a standard from which it
18 is exempt. Staff nevertheless told me that they wanted this report. It is not possible for Comcast
19 Phone to provide this report because the basis for measurement is "by central office." Comcast's
20 network architecture does not include a "central office," as defined by the rules. Comcast Phone
21 leases switching capacity from a third party. Thus, Comcast Phone simply cannot provide the
22 report called for in this subsection.

23 (c) WAC 480-120-439(6), (7), (8) ("Summary trouble reports," "switching
24 reports" and "trunk blocking report"). As stated above, because Comcast Phone does not have
25 "central offices" within its network architecture, it cannot produce these reports.

1 (d) WAC 480-120-439(9) ("Repair report"). Comcast does not separately
2 track service calls for its cable video, cable Internet or telephony lines of business. Therefore, it
3 would have to revise its existing service quality measurement system to separate out a metric for
4 telephony. This will involve considerable upfront and ongoing expense similar to that for
5 WAC 480-120-439(3) ("Missed appointment report").

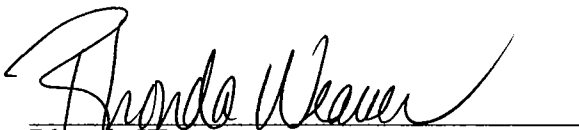
6 (e) WAC 480-120-439-10 ("Business office and repair answering system
7 reports"). Comcast tracks service quality by market area, such as Portland or Seattle. Therefore,
8 service quality metrics for Vancouver, Washington would be contained in the measurement for
9 the Portland, Oregon market, which are treated as a single market by Comcast. Separating out
10 this data would involve considerable time and expense.

11 12. As Paragraph 11 establishes, Comcast Phone either cannot technically comply
12 with the reporting requirements of WAC 480-120-439 or it would be unduly burdensome for it to
13 do so. Comcast Phone would have to modify existing systems at great expense to capture new
14 data, train employees and produce the new reports.

15 13. Comcast Phone does not have a recent pattern of service quality complaints
16 regarding the service quality which is the subject of the reports called for by WAC 480-120-439.
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1 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
2 OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

3
4 EXECUTED at Seattle, WA, this 29 day of September,
5 2003.

6
7 
8 Rhonda Weaver

ATTACHMENT A

Dickerson, Nancy E.

From: Bob Williamson [BWilliam@wutc.wa.gov]
Sent: Thursday, July 17, 2003 2:58 PM
To: Weaver, Rhonda
Cc: Erin Hannan; Glenn Blackmon; Kristen Russell
Subject: Class A Telephone Company

Hello Rhonda,

It is the Commissions understanding that Comcast serves approximately 117,000 working residence telephone access lines in Washington State. That means that Comcast serves more than 2% of the access lines in this state. According to WAC 480-120-302 that would make Comcast a Class A company. Class A companies must report monthly the information required in WAC 480-120-439 subsections (3), (4), and (6) through (10).

We would like to discuss these requirements with you at your earliest convenience.

Hope you are doing well in your new job. I wish the first contact would have been over something more enjoyable. Please contact me (360)664-1288 or Erin Hannan (360)664-1349 to discuss further.

Regards,

Bob Williamson
Senior Member Technical Staff
Washington Utilities and Transportation Commission
(360)664-1288

ATTACHMENT B

Dickerson, Nancy E.

From: Weaver, Rhonda [Rhonda_Weaver@cable.comcast.com]
Sent: Friday, July 18, 2003 2:34 PM
To: 'Glenn Blackmon'
Subject: RE: Access lines

Glenn,

Next week is fine. My schedule is fairly flexible so let me know what works for you and I'll work around it. I'm leaving for NARUC Friday morning so if we could meet earlier in the week I'd appreciate it.

As for requesting the raw data from the records center, I don't mind requesting it, but I understand that many companies file annual reports as proprietary. It makes sense to have staff compile the total numbers and publish the findings so that companies can determine 2% of the state access lines. WAC 480-120-302 does not refer companies to the Department of Revenue to collect this data, but to the WUTC records center.

In any event, I look forward to discussing these issues with you.

Rhonda Weaver
Director - Government Affairs
Comcast
360 705-2537 X 3404 (voice)
360 280-4780 (cell)
Rhonda_Weaver@cable.comcast.com

-----Original Message-----

From: Glenn Blackmon [mailto:blackmon@wutc.wa.gov]
Sent: Friday, July 18, 2003 12:08 PM
To: Weaver, Rhonda
Subject: Access lines

Rhonda,

I'm swamped with Qwest Dex matters today and so will need to wait about discussing the service quality reporting issues with you. Maybe we could meet next week.

In the meantime, I wanted to move things along on the data side. First, the "raw data" that may be requested from the records center, pursuant to the rule, is the company annual reports. I understand that you don't really want the entire report, but that's where the numbers are. I'm going to try to have someone compile the access line numbers, so that we could publish a non-confidential total figure, but we are not actually required to do that.

However, I also want to offer you what I consider to be a reliable count of access lines in Washington. According to data supplied to us by the state Department of Revenue, there were 3,412,593 access lines as of 12/31/02. This is the number of switched access lines that telecom companies reported in paying E-911 taxes to the state. Using that number, the cutoff between Class A and Class B would be at 68,252 lines.

Let's talk next week.

Regards,
Glenn

ATTACHMENT C

Dickerson, Nancy E.

From: Glenn Blackmon [blackmon@wutc.wa.gov]
Sent: Monday, July 28, 2003 5:32 PM
To: Weaver, Rhonda
Subject: Comcast service quality reports

Rhonda,

I would like to follow up on our meeting last week to discuss Comcast's filing of service quality reports.

As I understand it, the biggest question about whether Comcast must report under WAC 480-120-439 has to do with whether it is a "Class A company," a "Class B company," or neither. If it is a Class A company, it must file performance reports. If it is a Class B company, it must maintain records of its performance for inspection by the WUTC. If it is neither Class A nor Class B, then it is not subject to 480-120-439 at all.

We discussed the definition of these two terms in WAC 480-120-302 Accounting rules for companies not classified as competitive. The argument, as I understand it, is that since 480-120-302 applies only to non-competitive companies, a competitive company would be neither a Class A company nor a Class B company.

After the meeting I read the rules again, and I am glad to report that they are not as muddled as that reading would suggest. "Class A company" and "Class B company" are defined in WAC 480-120-021 Definitions. (I'm attaching a copy.) This rule defines a Class A company to be "a local exchange company with two percent or more of the access lines within the state of Washington." This definition is in no way limited to non-competitive companies. Comcast, as a local exchange company, has to be either a Class A company or a Class B company.

The question about whether Comcast is Class A or Class B is a factual one. I am aware of no evidence that would support the claim that Comcast is a Class B company. The FCC recently reported (http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0603.pdf) that ILECs and CLECs together have 3,960,744 access lines in Washington state. That would put the cutoff between Class A and Class B at 79,215 lines.

I look forward to hearing from you about how Comcast wants to proceed on this issue.

Regards,
Glenn Blackmon

WAC 480-120-021 Definitions. The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

"Access charge" means a rate charged by a local exchange carrier to an interexchange carrier for the origination, transport, or termination of a

call to or from a customer of the local exchange carrier. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

"Access line" means a circuit providing exchange service between a customer's standard network interface and a serving switching center.

"Affiliate" means an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

"Ancillary services" means all local service features excluding basic service.

"Applicant" means any person applying to a telecommunications company for new service or reconnection of discontinued service.

"Average busy hour" means a time-consistent hour of the day during which a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Basic service" means service that includes the following:

- * Single-party service;
- * Voice grade access to the public switched network;
- * Support for local use;
- * Dual tone multifrequency signaling (touch-tone);
- * Access to emergency services (E911);
- * Access to operator services;
- * Access to interexchange services;
- * Access to directory assistance; and
- * Toll limitation services.

"Business" means a for profit or not-for-profit organization, including, but not limited to, corporations, partnerships, sole proprietorships, limited liability companies, government agencies, and other entities or associations.

"Business days" means days of the week excluding Saturdays, Sundays, and official state holidays.

"Business office" means an office or service center provided and maintained by a company.

"Business service" means service other than residential service.

"Busy season" means an annual, recurring, and reasonably predictable three-month period of the year when a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Call aggregator" means any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones (see also pay phone service providers).

"Call detail" has the meaning found in WAC 480-120-201.

"Category of service" means local, data services such as digital subscriber line service, interexchange, or CMRS. Information about a customer's intraLATA and interLATA primary interexchange carrier freeze status is part of the local category.

"Central office" means a company facility that houses the switching and trunking equipment serving a defined area.

"Centrex" means a telecommunications service providing a customer with direct inward dialing to telephone extensions and direct outward dialing from them.

"Class A company" means a local exchange company with two percent or more of the access lines within the state of Washington.

"Class B company" means a local exchange company with less than two percent of the access lines within the state of Washington.

"Commercial mobile radio service (CMRS)" means any mobile (wireless) telecommunications service that is provided for profit that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

"Commission (agency)" in a context meaning a state agency, means the Washington utilities and transportation commission.

"Company" means any telecommunications company as defined in RCW 80.04.010.

"Competitively classified company" means a company that is classified as competitive by the commission pursuant to RCW 80.36.320.

"Customer" means a person to whom the company is currently providing service.

"Customer premises equipment (CPE)" is equipment located on the customer side of the SNI (other than a carrier) and used to originate, route, or terminate telecommunications.

"Customer proprietary network information (CPNI)" has the meaning found in WAC 480-120-201.

"Discontinue; discontinuation; discontinued" means the termination of service to a customer.

"Drop facilities" means company-supplied wire and equipment placed between a premises and the company distribution plant at the applicant's property line.

"Due date" means the date an action is required to be completed by rule or, when permitted, the date chosen by a company and provided to a customer as the date to complete an action.

"Emergency response facility" means fire stations, hospitals, police stations, and state and municipal government emergency operations centers.

"Exchange" means a geographic area established by a company for telecommunications service within that area.

"Extended area service (EAS)" means telephone service extending beyond a customer's exchange, for which the customer may pay an additional flat-rate amount per month.

"Facility or facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service.

"Force majeure" means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

"Interexchange" means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

"Interexchange company" means a company, or division thereof, that provides long distance (toll) service.

"Interoffice facilities" means facilities connecting two or more telephone switching centers.

"InterLATA" is a term used to describe services, revenues, functions, etc.,

that relate to telecommunications originating in one LATA and terminating outside of the originating LATA.

"IntraLATA" is a term used to describe services, revenues, functions, etc., that relate to telecommunications that originate and terminate within the same LATA.

"Local access and transport area (LATA)" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Local calling area" means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges.

"Local exchange company (LEC)" means a company providing local exchange telecommunications service.

"Major outages" means a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand subscribers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch.

"Missed commitment" means orders for exchange access lines for which the company does not provide service by the due date.

"Order date" means the date when an applicant requests service unless a company identifies specific actions a customer must first take in order to be in compliance with tariffs, price lists, or commission rules. Except as provided in WAC 480-120-061 and 480-120-104, when specific actions are required of the applicant, the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service.

When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one hundred eighty-day requirement of WAC 480-120-112 (Company performance for orders for nonbasic service) the order date is the application date unless the applicant fails to provide the support structure or perform other requirements of the tariff or price list. In the event the applicant fails to provide the support structure or perform the other requirements of the tariff or price list, a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff or price list.

"Pay phone" or "pay telephone" means any telephone made available to the public on a fee-per-call basis independent of any other commercial transaction. A pay phone or pay telephone includes telephones that are coin-operated or are activated by calling collect or using a calling card.

"Pay phone services" means provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

"Pay phone service provider (PSP)" means any corporation, company,

partnership, or person who owns or operates and makes pay phones available to the public.

"Payment agency" means a physical location established by a local exchange company, either on its own premises or through a subcontractor, for the purpose of receiving cash and urgent payments from customers.

"Person" means an individual, or an organization such as a firm, partnership, corporation, municipal corporation, agency, association or other entity.

"Prior obligation" means an amount owed to a local exchange company or an interexchange company for regulated services at the time the company physically toll-restricts, interrupts, or discontinues service for nonpayment.

"Private account information" means customer proprietary network information that is associated with an identifiable individual.

"Proprietary" means owned by a particular person.

"Provision" means supplying telecommunications service to a customer.

"Public access line (PAL)" means an access line equipped with features to detect coins, permit the use of calling cards, and such other features as may be used to provision a pay phone.

"Public safety answering point (PSAP)" means an answering location for enhanced 911 (E911) calls originating in a given area. PSAPs are designated as primary or secondary. Primary PSAPs receive E911 calls directly from the public; secondary PSAPs receive E911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

"Residential service" means basic service to a household.

"Restricted basic service" means either the ability to receive incoming calls, make outgoing calls, or both through voice grade access to the public switched network, including E911 access, but not including other services that are a part of basic service.

"Results of operations" means a fiscal year financial statement concerning regulated operations that include revenues, expenses, taxes, net operating income, and rate base. The rate of return is also included as part of the results of operations. The rate of return is the percentage of net operating income to the rate base.

"Service interruption" means a loss of or impairment of service that is not due to, and is not, a major outage.

"Service provider" means any business that offers a product or service to a customer, the charge for which appears on the customer's telephone bill.

"Special circuit" means an access line specially conditioned to give it characteristics suitable for handling special or unique services.

"Standard network interface (SNI)" means the protector that generally marks the point of interconnection between company communications facilities and customer's terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface or demarcation point is located on the customer's side of the company's protector, or the equivalent thereof in cases where a protector is not employed.

"Station" means a telephone instrument installed for the use of a subscriber to provide toll and exchange service.

"Subscriber list information (SLI)" means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

"Support structure" means the trench, pole, or conduit used to provide a path for placement of drop facilities.

"Telecommunications-related products and services" means:

(a) The offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used; or

(b) Services offered over common carrier transmission facilities which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information; or

(c) Equipment employed on the premises of a person to originate, route, or terminate telecommunications.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

"Telemarketing" means contacting a person by telephone in an attempt to sell one or more products or services.

"Toll restriction" or "toll restricted" means a service that prevents the use of a local access line to initiate a long distance call using a presubscribed interexchange company.

"Traffic" means telecommunications activity on a telecommunications network, normally used in connection with measurements of capacity of various parts of the network.

"Trouble report" means a report of service affecting network problems reported by customers, and does not include problems on the customer's side of the SNI.

"Trunk" means, in a telecommunications network, a path connecting two switching systems used to establish end-to-end connection. In some circumstances, both of its terminations may be in the same switching system.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-021, filed 12/12/02, effective 7/1/03. Statutory Authority: RCW 80.04.160, 80.36.520 and 80.01.040. 99-02-020 (Order R-452, Docket No. UT-970301), § 480-120-021, filed 12/29/98, effective 1/29/99. Statutory Authority: RCW 80.01.040. 93-06-055 (Order R-384, Docket No. UT-921192), § 480-120-021, filed 2/26/93, effective 3/29/93. Statutory Authority: RCW 80.01.040 and chapter 80.36 RCW. 91-13-078 (Order R-345, Docket No. UT-900726), § 480-120-021, filed 6/18/91, effective 7/19/91. Statutory Authority: RCW 80.01.040 and 1988 c 91. 89-04-044 (Order R-293, Docket No. U-88-1882-R), § 480-120-021, filed 1/31/89. Statutory Authority: RCW 80.01.040. 86-11-009 (Order R-250, Cause No. U-85-58), § 480-120-021, filed 5/12/86, effective 7/31/86. Statutory Authority: RCW 80.01.040 and 1985 c 450. 85-23-001 (Order R-242, Cause No. U-85-56), § 480-120-021, filed 11/7/85. Statutory Authority: RCW 80.04.060. 79-10-060 (Order R-131, Cause No. U-79-42), § 480-120-021, filed 9/18/79. Statutory Authority: RCW 80.36.140. 79-03-031 (Order R-123, Cause No. U-79-01), § 480-120-021, filed 2/28/79; Order R-25, § 480-120-021, filed 5/5/71. Formerly WAC 480-120-030.]