Possible Telecom-related Rule Changes

January 14, 2004

Docket UT-040015

1. Telephone customer privacy rules (WAC 480-120-201 through –216)

The WUTC was permanently enjoined from enforcing its telephone customer privacy rules on August 27, 2003. The ruling affected these rules:

PART VI. CUSTOMER INFORMATION

480-120-201 Definitions.

480-120-203 Use of customer proprietary network information (CPNI) not permitted to identify or track customer calls to competing service providers.

480-120-204 Opt-in approval required for use, disclosure, or access to customer I-CPNI.

480-120-205 Using customer proprietary network information (CPNI) in the provision of services.

480-120-206 Using individual customer proprietary network information (I-CPNI) during inbound and outbound telemarketing calls.

480-120-207 Use of private account information (PAI) by company or associated companies requires opt-out approval.

480-120-208 Use of customers' private account information (PAI) to market company products and services without customer approval.

480-120-209 Notice when use of private account information (PAI) is permitted unless a customer directs otherwise (opt-out).

480-120-211 Mechanisms for opting out of use of private customer account information (PAI).

480-120-212 Notice when express (opt-in) approval is required and mechanisms for express approval.

480-120-213 Confirming changes in customer approval status.

480-120-214 Duration of customer approval or disapproval.

480-120-215 Safeguards required for I-CPNI.

480-120-216 Disclosing CPNI on request of customer.

It did not affect these rules:

480-120-217 Using privacy listings for telephone solicitation.

480-120-218 Using subscriber list information for purposes other than directory publishing.

480-120-219 Severabililty.

2. Record of third-party verifications in anti-slamming rule (WAC 480-120-147)

As part of the anti-slamming rule, companies are required to retain records when a third-party verification firm is used to confirm a customer's change in service. The rule specifies the type of information that must be retained, but the current rule does not require that companies record the date of the third-party verification. This information would assist in resolving disputes about whether a customer actually authorized a change in service.

> **WAC 480-120-147 Changes in local exchange and intrastate toll services.**
> *[…]*
> (3) The documentation regarding a customer's authorization for a preferred carrier change must be retained by the submitting carrier, at a minimum, for two years to serve as verification of the customer's authorization to change his or her telecommunications company. The documentation must be made available to the customer and to the commission upon request and at no charge. Documentation includes, but is not limited to, entire third-party-verification conversations and, for written verifications, the entire verification document.
> *[remainder of rule omitted]*

3. Update anti-slamming rule to be consistent with federal rule (WAC 480-120-147)

The anti-slamming rule, WAC 480-120-147, has not been updated to reflect recent changes in the federal rule. Consumer Affairs' Slamming Complaint Procedure incorporates the federal rules, as set out below:

Section 7, a, 5 (first bullet) in the Slamming Complaint Procedure reads:

The carrier has a valid verification, but did not change the consumer's service within 60 days of the date of the verification (FCC 3rd Report & Order in Docket 94-129, paragraph 34, released 8/15/00; and FCC Rule 64.1130(e)(5)(j)).

FCC 3rd Report & Order in Docket 94-129, paragraph 34 reads:

> We will not adopt a 30-day limit on the effectiveness of an LOA as suggested by petitioner SCB. We believe a more reasonable limitation on the amount of time an LOA should be considered valid is 60 days, and we hereby adopt this 60-day limit. We further conclude that the 60-day limits shall apply to submitting carriers rather than executing carriers, because submitting carriers are actually parties to the contractual agreement with the customer and, as such, are more capable of conforming their behavior to the obligation.

FCC Rule 64.1130(e)(5)(j), Letter of Agency Form and Content reads:

> A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency.

Section 7, a, 5 (fourth bullet) in the Slamming Complaint Procedure reads:
The telemarketer did not drop off the call as soon as the connection between the 3rd party verifier and the consumer was made (a violation of FCC rule 64.1120(c)(2)(ii)).

FCC rule 64.1120(c)(2)(ii) reads:

> A carrier or a carrier's sales representative initiating a three-way conference call or a call through an automated verification system must drop off the call once the three-way connection has been established.

4. Refund of deposits to business customers (WAC 480-120-128)

In the rule on deposits, the subsection on refunding deposits has a title that refers to residential customers only. This is confusing, because the text of the rule does not limit the provision to residential service.

> **WAC 480-120-128 Deposit administration**. (1) **Transfer of deposit.** A company must transfer a customer's deposit, less any outstanding balance, from the account at one service address to another service address, when a customer moves to a new address, is required to pay a deposit, and continues to receive service from that company.
>
> (2) **Interest on deposits.** Companies that collect customer deposits must pay interest on those deposits calculated:
>
> (a) For each calendar year, at the rate for the one-year Treasury Constant Maturity calculated by the U.S. Treasury, as published in the Federal Reserve's Statistical Release H.15 on January 15 of that year. If January 15 falls on a nonbusiness day, the company will use the rate posted on the next following business day; and
>
> (b) From the date of deposit to the date of refund or when applied directly to the customer's account.
>
> ***(3) Refunding deposits for residential services. Companies must refund deposits, plus accrued interest, less any outstanding balance, to a customer when:***
>
> (a) A customer terminates service or services for which a deposit is being held.
>
> A company is not required to refund an amount held on deposit when a customer requests a discontinuation of service or services but requests to establish similar service with a company for which the current deposit holder also provides billing and collection service. The new provider must have authority with the commission to collect deposits; or
>
> (b) The customer has paid for service for twelve consecutive months in a prompt and satisfactory manner as evidenced by the following:
>
> (i) The company has not issued a discontinuation notice against the customer's account for nonpayment during the last twelve months; and
>
> (ii) The company has sent no more than two delinquency notices to the customer in the last twelve months.
>
> (c) A company may apply a deposit refund to a customer's account or, upon customer request, must provide the refund in the form of a check issued and mailed to the customer no later than thirty days after satisfactory payment history is established or thirty days after the date the closing bill is issued when service is terminated.

5. Application of the out-of-service credit provision (WAC 480-120-164)

WAC 480-120-164 requires pro rata credits when service is not available for more than 24 hours in a billing cycle. The rule does not limit the credit to customer-reported outages, and there have been questions about whether companies are required to detect out-of-service conditions. Staff has provided informal advice that the rule does not require companies to implement systems to detect all outages but must provide the credit when it detects an outage in its normal course of business. Verizon withdrew a petition for clarification in Docket UT-030955 based on the Staff interpretation.

> **WAC 480-120-164 Pro rata credits.** Every telecommunications company must provide pro rata credits to customers of a service whenever that service is billed on a monthly basis and is not available for more than a total of twenty-four hours in a billing cycle. The minimum amount of pro rata credit a company must provide is the monthly cost of service divided by thirty, then multiplied by the number of days or portions of days during which service was not provided.
>
> For example:
>
> **(Cost of Service)**
>
> **X (Number of days or portions of days without service) = Pro Rata Credit**
>
> **(Thirty)**
>
> Pro rata credits are not required when force majeure, customer premises equipment, or inside wiring is the proximate cause for the unavailability of a service. If a company provides a credit amount for unavailable service that is equal to or greater than the credit amount required by this rule, the amount of credit required by this rule need not be provided.

6. Application of rule on restoring service after discontinuation (WAC 480-120-173)

WAC 480-120-173 establishes conditions under which a company must restore service when a customer has been disconnected. It is not clear from WAC 480-120-173 how long after disconnection a customer can "restored," as opposed to having to apply for service as a new customer. The rule could be clarified to specify the time period, after disconnection, where a customer could have service restored.

> **WAC 480-120-173 Restoring service after discontinuation.** (1) A company must restore a discontinued service when:
>
> (a) The causes of discontinuation not related to a delinquent balance have been removed or corrected. In the case of deceptive practices as described in WAC 480-120-172 (1)(a), this means the customer has corrected the deceptive practice and has paid the estimated amount of service that was taken through deceptive means, all costs resulting from the deceptive use, any applicable deposit, and any delinquent balance owed to the company by that customer for the same class of service. A company may require a deposit from a customer that has obtained service in a deceptive manner as described in WAC 480-120-172 (1)(a). A company is not required to allow six-month arrangements on a delinquent balance as provided for in WAC 480-120-173 (1)(b) when it can demonstrate that a customer obtained service through deceptive means in order to avoid payment of a delinquent amount owed to that company;
>
> (b) Payment or satisfactory arrangements for payment of all proper charges due from the applicant, including any proper deposit and reconnection fee, have been made. Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first half of a deposit is paid as provided for in WAC 480-120-122; or
>
> (c) The commission staff directs restoration pending resolution of any dispute between the company and the applicant or customer over the propriety of discontinuation.
>
> ***[remainder of section omitted]***

7. Application of WTAP "fresh start" rule to former customers (WAC 480-120-174)

WAC 480-120-174 requires companies to restore service to customers who were disconnected for nonpayment and subsequently enroll in the telephone assistance program for low-income customers. There are differences of interpretation about whether this opportunity is available only immediately after service is discontinued or whether a former customer may obtain service under this rule at any time.

> **WAC 480-120-174 Restoring service based on Washington telephone assistance program (WTAP) or federal enhanced tribal lifeline program eligibility.** (1) Local exchange companies (LECs) must restore service for any customer who has had basic service discontinued for nonpayment under WAC 480-120-172 (Discontinuing service -- Company initiated) if the customer was not a participant in either Washington telephone assistance program (WTAP) or the federal enhanced tribal lifeline program at the time service was discontinued and if the customer is eligible to participate in WTAP or the federal enhanced tribal lifeline program at the time the restoration of service is requested. To have service restored under this section, a customer must establish eligibility for either WTAP or the federal enhanced tribal lifeline program, agree to continuing participation in WTAP or the federal enhanced tribal lifeline program, agree to pay unpaid basic service and ancillary service amounts due to the LEC at the monthly rate of no more than one and one-half times the telephone assistance rate required to be paid by WTAP participants as ordered by the commission under WAC 480-122-020, agree to toll restriction, or ancillary service restriction, or both, if the company requires it, until the unpaid amounts are paid. Companies must not charge for toll restriction when restoring service under this section.
>
> (2) In the event a customer receiving service under this section fails to make a timely payment for either monthly basic service or for unpaid basic service or ancillary service, the company may discontinue service pursuant to WAC 480-120-172.
>
> (3) Nothing in this rule precludes the company from entering into separate payment arrangements with any customer for unpaid toll charges.

8. Definition of Class A and Class B companies (WAC 480-120-021, WAC 480-120-302)

The rules define a "Class A" company as one with 2 percent or more of the state's access lines and a "Class B" company as one with less than 2 percent of the lines. Class B companies are exempt from various reporting requirements. This was meant to conform to the statutory definition of companies exempt from reporting requirements. However, the statute provides that access lines of affiliated companies be counted in measuring the 2 percent threshold, while the definition in the rule does not include this provision.

Also, the terms are defined twice in the rules: 480-120-021 Definitions and 480-120-302(1) Accounting requirements for companies not classified as competitive. The latter definition has more information about calculating the 2 percent threshold, and it provides a "safe harbor" value based on 1998 information.

There is a dispute about whether the Class A/Class B distinction applies to companies that are classified as competitive. Comcast has filed a petition on this issue (Docket UT-030626).

Possible changes include conforming the definition to the statute, updating the 1998 "safe harbor" value and providing a mechanism for periodic updates to that value, eliminating the duplication of definition, and clarifying the application to competitive companies.

> **WAC 480-120-021 Definitions.**
> *[…]*
> "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.
> ***[remainder of rule omitted]***
>
> **WAC 480-120-302 Accounting requirements for companies not classified as competitive.** (1)(a) Companies with two percent or more of state access lines and companies with less than two percent of state access lines are classified as follows:

Class	Number of Access Lines as of December 31 from prior year's annual report
A	2% or more of state access lines
B	Less that 2% of state access lines

> For example:

Company X access lines as of 12/31/98	33,823
Divided by	
Total state access lines as of 12/31/98	3,382,320
Equals company access lines as a percentage of total access lines.	1%

Therefore, company X is a Class B company.

(b) As long as a company can show it serves less than two percent of the total access lines listed in (a) of this subsection, it may compare future years to the year listed in the example above, as a safe harbor option.

(c) If a company has more than two percent of the total access lines listed in (a) of this subsection, but believes that it has less than two percent of a subsequent year to that listed in the example above, it may use the more recent "total state access lines" as of that subsequent year in order to calculate a different threshold, as long as it provides all relevant information in a letter of certification to the commission concurrent with its election. For purposes of this rule the raw data may be requested from the commission's record center in order for the company seeking the data to generate its own calculation subsequent, and pursuant, to this rule.

[remainder of rule omitted]

RCW 80.04.530

Local exchange company that serves less than two percent of state's access lines -- Regulatory exemptions -- Reporting requirements.

(1)(a) Except as provided in (b) of this subsection, the following do not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington: RCW 80.04.080, 80.04.300 through 80.04.330, and, except for RCW 80.08.140, chapters 80.08, 80.12, and 80.16 RCW.

(b) Nothing in this subsection (1) shall affect the commission's authority over the rates, service, accounts, valuations, estimates, or determinations of costs, as well as the authority to determine whether any expenditure is fair, reasonable, and commensurate with the service, material, supplies, or equipment received.

(c) For purposes of this subsection, the number of access lines served by a local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.

(2) Any local exchange company for which an exemption is provided under this section shall not be required to file reports or data with the commission, except each such company shall file with the commission an annual report that

consists of its annual balance sheet and results of operations, both presented on a Washington state jurisdictional basis. This requirement may be satisfied by the filing of information or reports and underlying studies filed with exchange carrier entities or regulatory agencies if the jurisdictionally separated results of operations for Washington state can be obtained from the information or reports. This subsection shall not be applied to exempt a local exchange company from an obligation to respond to data requests in an adjudicative proceeding in which it is a party.

(3) The commission may, in response to customer complaints or on its own motion and after notice and hearing, establish additional reporting requirements for a specific local exchange company.

9. Prohibition on using ADADs to dial unlisted numbers (WAC 480-120-253)

WAC 480-120-253(5)(c) prohibits the use of automatic dialing and announcing devices (ADADs) to call unlisted telephone numbers.

In Docket UT-030273, the WUTC granted an exemption from this requirement to Qwest Corporation and said the requirement should be given further consideration. It noted that the term "unlisted" is not defined and difficult to interpret, that the prohibition applies even where there is an existing relationship, and that the prohibition cannot be waived by the called party. It appears that ADADs are commonly used, without objection, for non-commercial purposes that include the dialing of unlisted numbers.

> **WAC 480-120-253 Automatic dialing-announcing device (ADAD).** (1) An automatic dialing and announcing device (ADAD) is a device that automatically dials telephone numbers and plays a recorded message once a connection is made.
>
> (2) "Commercial solicitation" means an unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.
>
> (3) This rule regulates the use of ADADs for purposes other than commercial solicitation. RCW 80.36.400 prohibits the use of an ADAD for purposes of commercial solicitation intended to be received by telephone customers within the state.
>
> (4) This rule does not apply to the use of ADADs by government agencies to deliver messages in emergency situations.
>
> (5) Except for emergency notification as provided for in subsection (6) of this section, an ADAD may be used for calls to telephone customers within the state only if:
>
> (a) The recorded message states the nature of the call, identifies the individual, business, group, or organization for whom the call is being made, and telephone number to which a return call can be placed; and
>
> (b) It automatically disconnects the telephone connection within two seconds after the called party hangs up the receiver.
>
> ***(c) The ADAD does not dial unlisted telephone numbers (except as provided in this subsection), designated public service emergency telephone numbers as listed in published telephone directories, or any telephone number before 8:00 a.m. or after 9:00 p.m. An ADAD may dial an unlisted number if the ADAD is being used to deliver the name, telephone number, or brief message of a calling party to a called party when the called party's line was busy or did not answer.***

10. Clarify obligation of LECs to update E-911 information (WAC480-120-450)

WAC 480-120-450(2)(e) requires LECs to resolve reports of data base errors within five working days. In Docket UT-030394 the WUTC issued an interpretive statement:

> Subsection (2)(e) of WAC 480-120-450 requires LECs to resolve reports of data base errors within five working days. That obligation falls on LECs in their role as service providers. That subsection does not impose those obligations on LECs that administer an E-911 data base, but do not provide service at the location where an error is reported.

This clarification could be incorporated in the text of the rule.

> **WAC 480-120-450 Enhanced 9-1-1 (E911) obligations of local exchange companies.**
> *[…]*
> (2)(a) LECs that provide or make available E911 data base management, whether directly or through contract, must provide to all PBX owners or their agents (including LECs) a simple, internet-based method to maintain customer records in the E911 data base, and the LEC may provide an option of a secure dial up access method for the PBX owner or agent to maintain customer records in the E911 data base. The method must use a generally accepted national format for customer record information.
> (b) LECs that provide or make available E911 data base management, whether directly or through contract, must provide or make available to all other LECs a simple, internet-based method to maintain customer records in the E911 data base for their non-PBX customers, and the LEC may provide an option of a secure dial up access or direct data link method for LECs to maintain customer records in the E911 data base. Methods for maintaining station location information that are not internet-based may be offered in addition to the required internet-based method.
> (c) LECs that provide pay phone access lines must maintain customer record information, including ELIN and ERL information, for those access lines using a method required by (b) of this subsection. Records must be forwarded to the data base manager within one business day of a record's posting to the company records system.
> (d) For single line services, PBX main station lines, and pay phone lines, LECs must transmit updated location information records to the data base management system (DBMS) within one business day of those records being posted to the company record system.
> Records that do not post to the DBMS because of address errors must be corrected within two working days unless modifications are necessary to the audit tables of the master street address guide, in which case the record must be resubmitted within one business day of notification that the master street address guide has been updated.

(e) E911 data base errors and inquiries, including selective routing errors, reported by county E911 data base coordinators or PSAPs must be resolved by the LEC or its agent administering the data base within five working days of receipt.

[remainder of rule omitted]

11. Cross-references to "deceptive practices" (WAC 480-120-173, 480-120-122)

"Deceptive practices" are listed in subsection (1) of WAC 480-120-172, with further subsections (a) through (d):

> **WAC 480-120-172 Discontinuing service -- Company initiated.** (1) A company may discontinue service without notice or without further notice when after conducting a thorough investigation, it finds the customer has performed a deceptive practice by:
>
> (a) Tampering with the company's property;
>
> (b) Using service through an illegal connection;
>
> (c) Unlawfully using service or using service for unlawful purposes; or
>
> (d) Obtaining service in another false or deceptive manner.
>
> *[remainder of rule omitted]*

Two other sections refer to these deceptive practices. In 480-120-173, the reference appears to be too narrow, referring only to subsection (1)(a) rather than subsection (1). In 480-120-122, the reference is too broad, referring to the entire section 172.

> **WAC 480-120-173 Restoring service after discontinuation.** (1) A company must restore a discontinued service when:
>
> (a) The causes of discontinuation not related to a delinquent balance have been removed or corrected. In the case of deceptive ***practices as described in WAC 480-120-172 (1)(a)***, this means the customer has corrected the deceptive practice and has paid the estimated amount of service that was taken through deceptive means, all costs resulting from the deceptive use, any applicable deposit, and any delinquent balance owed to the company by that customer for the same class of service. A company may require a deposit from a customer that has obtained service in a ***deceptive manner as described in WAC 480-120-172 (1)(a)***. A company is not required to allow six-month arrangements on a delinquent balance as provided for in WAC 480-120-173 (1)(b) when it can demonstrate that a customer obtained service through deceptive means in order to avoid payment of a delinquent amount owed to that company;
>
> (b) Payment or satisfactory arrangements for payment of all proper charges due from the applicant, including any proper deposit and reconnection fee, have been made. Applicants or customers, excluding telecommunications companies as defined in RCW 80.04.010, are entitled to, and a company must allow, an initial use, and then, once every five years dating from the customer's most recent use of the option, an option to pay a prior obligation over not less than a six-month period. The company must restore service upon payment of the first installment if an applicant is entitled to the payment arrangement provided for in this section and, if applicable, the first half of a deposit is paid as provided for in WAC 480-120-122; or

(c) The commission staff directs restoration pending resolution of any dispute between the company and the applicant or customer over the propriety of discontinuation.

(2) After the customer notifies the company that the causes for discontinuation have been corrected, and the company has verified the correction, the company must restore service(s) within the following periods:

(a) Service(s) that do not require a premises visit for reconnection must be restored within one business day; and

(b) Service(s) that requires a premises visit for reconnection must be restored within two business days. Companies must offer customers a four-hour window during which the company will arrive to complete the restoration.

(c) For purposes of this section Saturdays are considered business days.

(3) A company may refuse to restore service to a customer who has been discontinued twice for ***deceptive practices as described in WAC 480-120-172 (1)(a)*** for a period of five years from the date of the second disconnection, subject to petition by the customer to the commission for an order requiring restoration of service based on good cause.

WAC 480-120-122 Establishing credit -- Residential services. (1) This section applies only to the provision of residential services. A local exchange company (LEC) may require an applicant or customer of residential basic service to pay a local service deposit only in accordance with (a) through (e) of this subsection. For a LEC that offers basic service as part of any bundled package of services, the requirements of this subsection apply only to its lowest-priced, flat-rated residential basic service offering.

(a) If the applicant or customer has received two or more delinquency notices for basic service during the last twelve month period with that company or another company;

(b) If the applicant or customer has had basic service discontinued by any telecommunications company;

(c) If the applicant or customer has an unpaid, overdue basic service balance owing to any telecommunications company;

(d) If the applicant's or customer's service is being restored following a discontinuation for nonpayment or acquiring service through ***deceptive means under WAC 480-120-172***; or

(e) If the applicant or customer has been disconnected for taking service under ***deceptive means as described in WAC 480-120-172***.

[remainder of rule omitted]

12. Application of terminating access rule to CLECs (WAC 480-120-540)

The WUTC has granted exemptions to several CLECs permitting them to charge a higher terminating access rate than is permitted by WAC 480-120-540. These CLECs may charge up to the amount that Qwest and Verizon charge, including their universal service rate elements, even though the CLECs do not have customers in high-cost locations.

During the last review of WAC 480-120, the WUTC considered whether to incorporate this treatment of CLECs into the rule itself (thereby avoiding the need for company-specific exemptions) or ending the exemptions (thereby requiring CLECs to charge no more than incremental cost for terminating access).

> **WAC 480-120-540 Terminating access charges.** (1) Except for any universal service rate allowed pursuant to subsection (3) of this section, the rates charged by a local exchange company for terminating access shall not exceed the lowest rate charged by the local exchange company for the comparable local interconnection service (in each exchange), such as end office switching or tandem switching. If a local exchange company does not provide local interconnection service (or does so under a bill and keep arrangement), the rates charged for terminating access shall not exceed the cost of the terminating access service being provided.
>
> (2) The cost of the terminating access shall be determined based on the total service long-run incremental cost of terminating access service plus a reasonable contribution to common or overhead costs. Local loop costs are considered "shared" or "joint" costs and shall not be included in the cost of terminating access. However, nothing in this rule prohibits recovery of local loop costs through originating access charges (including switched, special, and dedicated as defined in subsection (4)(a) of this section).
>
> (3) If a local exchange company is authorized by the commission to recover any costs for support of universal access to basic telecommunications service through access charges, it shall recover such costs as an additional, explicit universal service rate element applied to terminating access service.
>
> (4) Definitions.
>
> (a) "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.
>
> (b) "Terminating access service" includes transport only to the extent that the transport service is bundled to the end office or tandem switching service. Dedicated transport unbundled from switching services is not subject to subsection (1) of this section.
>
> (c) "Bill and keep" (also known as "mutual traffic exchange" or "payment in kind") is a compensation mechanism where traffic is exchanged among companies on a reciprocal basis. Each company terminates the traffic originating

from other companies in exchange for the right to terminate its traffic on that company's network.

(5) The requirement of subsection (1) of this section that any terminating rate be based on cost shall not apply to any local exchange company that is a small business, or to any local exchange company that is competitively classified, if it concurs in the terminating rate of any local exchange company that has filed a terminating rate that complies with the requirements of subsection (1) of this section. For the purposes of this subsection, "small business" has the same meaning as it does in RCW 19.85.020.

(6) Any local exchange company that is required to lower its terminating access rates to comply with this rule may file tariffs or price lists (as appropriate) to increase or restructure its originating access charges. The commission will approve the revision as long as it is consistent with this rule, in the public interest and the net effect is not an increase in revenues.

13. Requirement to offer WTAP service (WAC 480-122-020)

WAC 480-122-020 requires that any local exchange company with more than 100 residential customers offer the discounted WTAP service to low-income applicants. The WUTC granted a temporary exemption to this requirement in July 2003, after DSHS changed the reimbursement formula for non-incumbent local exchange companies (Docket UT-030867).

The WUTC could consider whether to remove this requirement from the rule. Another possible action would be to revise the method of applying the resale discount to increase the margin that CLECs earn when they resell incumbents' service to WTAP customers.

> **WAC 480-122-020 Washington telephone assistance program rate.** The commission shall set by order the telephone assistance rate to be paid by program participants for local service. Every eligible telecommunications carrier (ETC) must offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36.475. Every non-ETC local exchange company must offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36.475 when one hundred or more of its access lines are subscribed to for residential service. Radio communications service companies that are not ETCs may offer the telephone assistance rates and discounts in accordance with RCW 80.36.410 through 80.36.475.

14. Response to informal complaints (WAC 480-120-166)

Subsection (11) of the rule on informal customer complaints has resulted in some confusion about the circumstances under which a company is required to respond to a staff request for information. The subsection does not refer to subsection (8), and it may duplicate the requirement in subsection (9).

> **WAC 480-120-166 Commission-referred complaints.** (1) Each company must keep a record of all complaints concerning service or rates for at least three years and, on request, make them readily available for commission review. The records must contain complainant's name and address, date and the nature of the complaint, action taken, and final result.
>
> (2) Each company must have personnel available during regular business days to respond to commission staff.
>
> (3) Applicants, customers, or their authorized representatives, may file with the commission an informal complaint as described in WAC 480-09-150 or a formal complaint against a company when there are alleged violations of statutes, administrative rules, or tariffs as provided by WAC 480-09-420 and 480-09-500.
>
> (4) When the commission staff refers an informal complaint to a company, the company must:
>
> (a) Stop any pending action involving the issues raised in the complaint provided any amounts not in dispute are paid when due (e.g., if the complaint involves a disconnect threat or collection action, the disconnect or collection must be stopped);
>
> (b) Thoroughly investigate all issues raised in the complaint and provide a complete report of the results of its investigation to the commission, including, if applicable, information that demonstrates that the company's action was in compliance with commission rules; and
>
> (c) Take corrective action, if warranted, as soon as appropriate under the circumstances.
>
> (5) Commission staff will ask the customer filing the informal complaint whether the customer wishes to speak directly to the company during the course of the complaint, and will relay the customer's preference to the company at the time staff opens the complaint.
>
> (6) The company must report the results of its investigation of service-affecting informal complaints to commission staff within two business days from the date commission staff passes the complaint to the company. Service-affecting complaints include, but are not limited to, nonfunctioning or impaired services (i.e., disconnected services or those not functioning properly).
>
> (7) The company must report the results of its investigation of nonservice-affecting informal complaints to commission staff within five business days from the date commission staff passes the complaint to the company. Nonservice-affecting complaints include, but are not limited to, billing disputes and rate quotes.

(8) Unless another time is specified in this rule or unless commission staff specifies a later date, the company must provide complete responses to requests from commission staff for additional information on pending informal complaints within three business days.

(9) The company must keep commission staff informed when relevant changes occur in what has been previously communicated to the commission and when there is final resolution of the informal complaint.

(10) An informal complaint opened with the company by commission staff may not be considered closed until commission staff informs the company that the complaint is closed.

(11) The company must provide information requested by staff regarding any informal complaint in accordance with subsections (6) and (7) of this section until such time as staff informs the company that the complaint is closed.

15. Emergency contact information (WAC 480-120-414)

The current rule on emergency plans and contacts requires that all telecommunications maintain emergency plans and provide us with contact information. The WUTC recently reminded companies of this requirement, in preparation for a state emergency readiness exercise in January. Several companies that have no network of their own (pure resellers) believe that the plans and contact information are unnecessary for their companies.

> **WAC 480-120-414 Emergency operation.** (1) All companies must maintain, revise, and provide to the commission the following:
>
> (a) The titles and telephone numbers of the company's disaster services coordinator and alternates; and
>
> (b) Upon request of the commission, the company's current plans for emergency operation, including current plans for recovery of service to governmental disaster recovery response agencies within the state of Washington.
>
> (2) For coordination of disaster response and recovery operations, each company must maintain on file with the Washington state emergency management division the titles and telephone numbers of the managers of the company's:
>
> (a) Local network operations center;
>
> (b) Regional network operations center; or
>
> (c) Emergency operations center.

16. Definition of a tariff change not subject to statutory notice (WAC 480-80-123)

WAC 480-80-123 lists the types of tariff changes that do not require statutory notice. One type listed is "a tariff change that does not affect the public."

This description is inconsistent with the corresponding provision covering price list changes and may be inconsistent with the statute.

- The rule on price list changes refers to "any price list filing … that makes changes not affecting the rates or charges paid by customers." WAC 480-120-205, as adopted 10/8/03.
- The telecom statute, RCW 80.36.110(1), says that "no change shall be made in any rate, toll, rental, or charge" except after the statutory notice period.
- The energy and water statute, RCW 80.28.060, says that "no change shall be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge, or service, or in any general privilege or facility" except after the statutory notice period.

However, since the statutory provisions in Chapter 80.36.and Chapter 80.28 are different, the best approach may be to have separate provisions for telecom companies and energy/water companies.

> **WAC 480-80-123 Tariff changes that do not require statutory notice.** (1) A utility must file with the commission tariff changes that do not require statutory notice at least one day before the effective date.
>
> (2) The filing must include a transmittal letter as set forth in WAC 480-80-104.
>
> (3) Tariff changes that do not require statutory notice include:
>
> (a) Initial tariffs filed by a newly regulated utility;
>
> (b) A filing for a service not previously contained within a regulated utility's existing tariff;
>
> (c) ***A tariff change that does not affect the public***; and
>
> (d) A change in a banded rate when notice to customers has been or will be given in accordance with tariff rules applicable to the service.

17. Requirement to include contact information in price lists (WAC 480-80-102)

WAC 480-80-102(1)(f) requires that the title page of each tariff include "the complete name, address, phone number, unified business identifier (UBI) number, and if available, the mail address and web page address of the issuing utility."

The corresponding rule for price lists, 480-80-204(2), does not require that this information be included on the title page.

> **WAC 480-80-102 Tariff content**. The tariff must include:
> (1) Title page. The first sheet of the tariff must contain the following information:
> (a) Tariff number;
> (b) The canceled tariff number, when applicable;
> (c) The types of services covered by the tariff;
> (d) An identification of the territory to which the tariff applies;
> (e) Effective date of the sheet; and
> (f) ***The complete name, address, phone number, unified business identifier (UBI) number, and if available, the mail address and web page address of the issuing utility.***
> *[remainder of rule omitted]*

> **WAC 480-80-204 Price lists format and content.** (1) A price list must include, for each service in the price list, a description of the service, any limitations, terms, or conditions on the offering of that service, and all rates, charges, or prices at which the service is offered.
> (2) A price list must:
> (a) Plainly state the places where the offered telecommunications service will be rendered;
> (b) Include the effective date clearly marked on each page;
> (c) Conform to all applicable laws, rules, and orders. The filing of a nonconforming price list will not be deemed a waiver of the law, rule, or order. A company may not enforce a price list provision that conflicts with a law, rule, or order unless the commission waives that law, rule, or order.
> *[remainder of rule omitted]*