SUMMARY OF COMMENTS
UT-040015
Telecommunications Tune-Up Rulemaking

March 3, 2004

Chapter 480-120 WAC	
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.	
Alliance (2/20/04)	As the Court stated in its opinion dated August 26, 2003, overturning Washington's telephone customer privacy rules, "there is a substantial state interest in ensuring that consumers be given an opportunity to approve uses of their CPNI." Consumers have a "privacy interest". In light of the Court's opinion, we ask the Commission to explore how Washington can best protect consumers' privacy interest in this personal confidential information. What should be developed is a road map that details what needs to happen in order for Washington residents to have the highest level of privacy protection possible. The process recommended should include possible legislative as well as administrative actions that could be taken. Possible areas of examination include addressing the issue of rule complexity and consumer confusion by simplifying the rules to require customer "opt-in" in all circumstances. Another area that begs exploration, and one recommended by the Court is the issue of "opt-out" notices. A consumer survey could be done to judge the effectiveness of the "opt-out" notices issued since the court's ruling and whether they were effective in notifying customers and informing them of the issues involved. If they were not effective, more stringent notification rules should be adopted.
MCI (2/20/04)	The Commission Staff notes that the Commission was permanently enjoined from enforcing its telephone customer privacy rules on August 27, 2003 and listed those rules affected by the injunction. MCI encourages the Commission simply to adopt the rules established by the Federal Communications Commission ("FCC") on

	customer privacy and not to create its own independent set of privacy rules that may differ from the FCC rules. The FCC rules were created as a result of extensive debate amongst the industry and consumer groups. The product is a set of rules that balances the rights and protections of all involved, including telecommunications consumers. No separate Washington specific rules are necessary to protect consumer privacy. Thus, creating and enforcing additional or difference privacy rules that apply to telecommunications companies that operate here in Washington would needlessly increase the regulatory burden on companies that do business here.
Public Counsel (2/20/04)	Public Counsel continues to believe that the most effective means of safeguarding private customer account information is through an all-inclusive opt-in approach. This is also consistent with the preference of the vast majority of customers. We recognize that the federal court has enjoined the "split-regime" rules previously adopted by the WUTC which contained a form of opt-in. Verizon v. Showalter. 282 F.Supp2nd 1187 (W.D. Wash 2003). Public Counsel recommends that the Commission pursue further rulemaking to consider whether a broader opt-in approach could be adopted that would meet the objections raised to the prior approach. In the alternative, Public Counsel recommends that the Commission conduct further rulemaking to, at a minimum, adopt Washington rules consistent with the current FCC rules. This would provide a basis for better enforcement in Washington of existing protections. In addition, it is important that such a rulemaking also consider improvements, clarifications and refinements, consistent with the FCC rules and WUTC authority, to address such issues as proper form and content of opt-out notices, and restrictions on sharing private information with entities such as third parties, joint venture partners, marketing partners, wholesale customers, and corporate affiliates.
Qwest (2/25/04)	Qwest assumes that the Commission's proposal is to delete the affected rules. Qwest would agree with this proposal in light of the federal court decision and the fact that the FCC's privacy rules apply to both interstate and intrastate CPNI.
Verizon (2/20/04)	As the Staff points out, "The WUTC was permanently enjoined from enforcing its telephone customer privacy rules on August 27, 2003." Therefore, the existing rules should be repealed.
WashPIRG (3/2/04)	As we stated during previous rulemakings, WashPIRG believes that the most effective way to protect private customer account information is through an all-inclusive opt-in approach. We ask that the Commission

	investigate the possibility of further rulemaking that would allow a broader opt-in approach for Washington State that would also meet the objections raised during WashPIRG recommends that the Commission pursue further rulemaking to consider whether a broader opt-in approach could be adopted that address the concerns we raised during the rulemaking for Docket Number UT-990146. In the alternative, WashPIRG requests that the Commission conduct further rulemaking to, at a minimum, adopt Washington rules consistent with the current FCC rules, which would provide a basis for better enforcement in Washington of existing protections. In addition, it is important that such a rulemaking also consider improvements, clarifications and refinements, consistent with the FCC rules and WUTC authority, to address such issues as proper form and content of opt-out notices, and restrictions on sharing private information with entities such as third parties, joint venture partners, marketing partners, wholesale customers, and corporate affiliates.

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. *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.*	
Comcast (2/20/04)	Two rules included in the CR-101 notice of rulemaking are WAC 480-120-021 and WAC 480-120-302. Comcast Phone believes that the WUTC should also consider including WAC 480-120-439 and any rule related to WAC 480-120-439 for modification to reflect that not all facility-based companies have architectures and infrastructures mirroring the ILEC.
MCI (2/20/04)	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. Staff notes that 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. Staff also observes that 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. Staff also notes the dispute about whether the Class A/Class B distinction applies to companies that are classified as competitive. MCI recommends that the Commission modify the rule to exempt competitive local exchange carriers, particularly non-facilities based carriers, from reporting requirements. MCI provides local residential service in Washington through the purchase of UNE-P from Qwest. MCI does not provide local residential service to any customers in Washington through the use of the company's own network facilities. Qwest prohibits physical access to its network equipment to its UNE-P wholesale customers. Thus, UNE-P providers are reliant on Qwest to install the UNE-P providers' end user customers' service as well as to maintain and repair their customers' service. UNE-P providers like MCI have no direct control over the provisioning and maintenance of the Qwest facilities it uses to offer UNE-P based service in Washington. Under these circumstances, service quality reporting requirements should not be imposed on non-facilities based CLECs. Further, if the Commission exempts CLECs from the reporting requirements, the public interest would be adequately protected by competitive forces and the Commission's regulatory oversight. As a competitive carrier, MCI is driven by market forces to provide timely service to its customers, where such service is within MCI's control. Because Washington customers are able to vote with their feet and switch carriers, MCI has a competitive incentive to provide service quality that meets and exceeds its customers' expectations whenever the underlying service is within MCI's control. With the presence of market-based incentives, no need exists for regulatory incentives such as service quality reporting.
Qwest (2/25/04)	Qwest will await a more definitive proposal before making comments.
Verizon (2/20/04)	In deciding whether to amend these rules, the Commission and parties must think through all the ramifications on companies of placing them in one classification or another. It could be that the "Class A" and "Class B" designations have outlived their usefulness, and reporting and regulatory requirements should be

	imposed or not based on more substantive considerations. First, when the RCW 80.04.530 "two percent exemption" to which Staff refers was enacted, the intent was to relieve small ILECs of some of the regulatory reporting requirements imposed on large ILECs. While local exchange companies that can demonstrate that they serve less than two percent of the state's lines are absolutely entitled to the specific exemptions listed in the statute, the Commission may also exempt CLECs that serve more than the two percent level. In fact, the Commission has done this in WAC 480-121-063, pursuant to RCW 80.36.320(2). Thus, it would be helpful for the Commission to clarify its rules on reporting requirements applicable to CLECs. Second, the Commission should, in any event, not use the provisions of RCW 80.04.530(c) to unnecessarily trap CLECs that are affiliated with ILECs. As the Staff points out, that statute says that "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." At the time it was enacted, this proviso served the reasonable purpose of preventing ILECs from avoiding reporting requirements by dividing into a number of smaller companies that fell below the two percent threshold. If applied narrowly today, however, it could have the absurd result of placing the full reporting burden on a CLEC serving just 100 lines in Washington, if that CLEC happened to be affiliated with an ILEC that serves more than two percent of the state's lines. This unwarranted result can be avoided by discarding the old Class A/Class B approach, and instead, clearly providing appropriate and competitively neutral treatment of all competitively classified companies.

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]*	
MCI (2/20/04)	MCI has no comment on Staff's proposal at this time.
Qwest (2/25/04)	Qwest will await a more definitive proposal before making comments.

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.

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.	
MCI (2/20/04)	MCI does not oppose a clarification on this issue.
Qwest (2/25/04)	Qwest would support a correction to WAC 480-120-128 (3) deleting the reference to residential service. Qwest would also recommend an additional modification to WAC 480-120-128 in subsection (2), Interest on Deposits. Customer deposit interest rates are updated and changed each year based on 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 each calendar year, effective on January 1. Unfortunately, by the time the new rate can be implemented in Qwest's systems, an entire month of interest recalculation is required on all customer accounts where interest is due. Therefore, Qwest proposes to change subsection (2) to allow either the new rate to become effective on February 1 of each year or the use of an interest rate published in the Federal Reserve's Statistical Release, H.15, by November 15th of the previous year.

WAC 480-120-133 Response time for calls to business office or repair center during regular business hours. (1) Calls placed to a company's business or repair center during regular business hours must be answered either by a live representative or an automated call answering system. (2) Companies that use an automated answering system must comply with the following requirements: (a) Each month, the average time until the automated system answers a call must not exceed thirty seconds; and (b) The automated system must provide a caller with an option to speak to a live representative within the first sixty seconds of the recorded message, or it must transfer the caller to a live representative within the first sixty seconds. (i) A company may provide the live representative option by directing the caller to take an affirmative action (e.g., select an entry on the telephone) or by default (e.g., be transferred when the caller does not select an option on the telephone). (ii) The recorded message must clearly describe the method a caller must use to reach a live representative. (c) Each month, the average time until a live representative answers a call must not exceed sixty seconds from the time a caller selects the appropriate option to speak to a live representative. (3) Companies that do not use an automated answering system must answer at least ninety-nine percent of call attempts, each month, within thirty seconds.	
AT&T (2/20/04)	The purpose of this rule is two fold; first to make sure that calls are handled in an efficient manner so that customers do not have to endure long periods on hold. Secondly, to ensure that consumers have an option to opt out to a live representative so that their inquiry can be handled promptly. AT&T believes that both of these goals are important, but found that strict adherence to the existing standards results in a negative experience for our customers. AT&T's business office model is based on the belief that customers are better served by representatives who specialize in a specific services' needs. Having extensive knowledge of a given service allows representatives to handle customer inquiries, fulfill requests and resolve customer problems more promptly and accurately. In order for its business office model to be successful, AT&T must ensure that customer calls are initially routed to the office that handles that specific service. Because AT&T offers an array of services (*e.g.*, residence,

	business, local service, customer calling features, toll plans, and internet) initial sorting to identify the appropriate office to route a customer's call may take longer than the sixty seconds defined in current rule. If AT&T were to offer an opt-out at the current sixty second mark, AT&T's process could sent customer calls to an office that may not be able to efficiently handle their account. In that instance, the customer would have to be transferred into another queue for their particular service. In today's competitive environment, it is essential that AT&T provide its customers with a quality experience or risk losing them to competitors. Subjecting customers to unnecessary transfers or to representatives who are unable to help them does not result in better customer service and therefore does not meet the Commission's underlying goal in adopting this rule. Rather, it merely serves to frustrate customers. In discussions with Staff, AT&T has agreed to develop a proposed rule prior to the March 11 stakeholder meeting that accommodates current technology while still ensuring reasonable customer service. AT&T hopes to discuss its proposed rule at the stakeholder meeting.

WAC 480-120-147 Changes in local exchange and intrastate toll services. Record of third-party verifications *[…]* (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]* *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.*	
MCI (2/20/04)	MCI requests that the Commission maintain the language in the current rule on this issue and not to make the change recommended by Staff. The date of the oral authorization is contained on WAV files maintained by MCI concerning third party verifications. This information can be provided to the Commission and is sufficient to resolve disputes as to the date of the authorization. It is not necessary to require the customer to state the date of the transaction during the TPV process. This additional step would unnecessarily waste consumer time. In addition, the current rule is consistent with the FCC slamming guidelines. Staff did not note in its Memo the extent of the perceived problem or the number of disputes between the companies and consumers that it has confronted which center around the accuracy of the *date* of the oral authorization. Perhaps the parties could discuss the extent of this problem and possible ways to resolve the problem that do not require unnecessary modifications to the current TPV process.

Public Counsel (2/20/04)	Public Counsel supports inclusion of a requirement in this rule that companies record the date of the third-party verification.
Qwest (2/25/04)	In principle, Qwest does not oppose the added requirement that companies record the date of third-party verification. Qwest would note that the FCC rule, 47 C.F.R. §64.1120(a)(1)(ii), states that the submitting carrier must maintain the record of verification of subscriber authorization for a minimum of two years after obtaining the verification, which inherently assumes the retention of the third-party verification date. Qwest will await a specific proposal before making further comments.
Verizon (2/20/04)	The document attached to Staff's January 16, 2003 memo states that the current rule does not require companies to record the date of the third party verification. Any dating requirement the Commission might adopt should permit techniques that companies currently use. Verizon requires its third party verifiers to electronically date stamp verification dates.
WashPIRG (3/2/04)	WashPIRG supports inclusion of a requirement in this rule.

WAC 480-120-147 Changes in local exchange and intrastate toll services.
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.*

MCI (2/20/04)	MCI agrees with Staff that the Washington rule should be updated to reflect the FCC rule on this issue.
Qwest (2/25/04)	Upon initial review, it is unclear what changes are proposed, and if such changes would be applied to PIC changes, preferred carrier freezes, or both. In principle, for PIC changes only, Qwest would not oppose rule changes that reflect the federal rule requirements. Qwest will await a specific proposal before making further comments.
Verizon (2/20/04)	With regard to updating the rule to be consistent with federal anti slamming rules, as the Staff suggests, the requirement to submit a change order within 60 days should not apply to customers with whom the Company has term agreements. The full term of such contracts should be honored.

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.

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.

MCI (2/20/04)	MCI believes the rule should remain as it is currently written or clarified to reflect that companies do not have to implement special systems to proactively manage incumbent local exchange carrier (ILEC) outages. MCI currently provides local residential services to consumers in Washington by purchasing the unbundled network element platform (UNE-P) from the incumbents. Thus, MCI currently relies on the ILEC to contact us

	when the ILEC experiences an outage. It would be exceedingly difficult to devise and implement a system whereby MCI would independently detect ILEC outages. Currently MCI issues credits in response to ILEC notifications and consumer calls regarding outages. MCI believes that the rule as it exists and is interpreted today properly balances consumer protection interests against the imposition of undue burden on the telecommunications industry.
Public Counsel (2/20/04)	Public Counsel believes that the pro-rata credits provided for in this rule should not be limited to instances where the customer contacts the company to report an out-of-service condition. The rule as adopted plainly does not require such action, and the burden should not be placed on the customer to contact the company to report an outage in order to receive a credit.
Qwest (2/25/04)	Qwest supports clarifying WAC 480-120-164 that pro rata credits apply when a specific customer outage is reported by the customer and when service is not available for more than 24 hours in a month.
Verizon (2/20/04)	Verizon agrees with the Staff that it would be helpful to the industry if the scope of the rule were made clearer. In addition, it should be made clear that companies may calculate the 24 hours of out-of-service conditions using either a "billing cycle" or 30-day month basis.
WashPIRG (3/2/04)	WashPIRG believes that the pro-rata credits provided for in this rule should not be limited to instances where the customer contacts the company to report an out-of-service condition. The rule as adopted plainly does not require such action, and the burden should not be placed on the customer to contact the company to report an outage in order to receive a credit.

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.*** *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).*	
MCI (2/20/04)	MCI has no comments regarding the Staff proposal at this time.
Qwest (2/25/04)	Qwest supports including a reference to subsections (8) and (9) of the rule in subsection (11) in addition to the references to subsections (6) and (7).
Verizon (2/20/04)	Verizon agrees with the Staff that this rule needs to be simplified and clarified. Subsection (11) indicates responses for [additional] information must be provided within 2 days for service-affecting complaints (per subsection 6), or within 5 days for non service-affecting complaints (per subsection 7). This conflicts with subsection (8), which states responses for additional information must be provided within 3 days, unless commission staff requests a later date. However, adding a reference to subsection (8) in subsection (11) would only confuse matters more. Verizon recommends that subsection (11) be eliminated entirely. In the alternative, Verizon recommends the verbiage be changed to read as follows: "The Company must provide information requested by staff regarding any informal complaint until such time as staff informs the company that the complaint is closed". This verbiage could also be added to the end of subsection (8).

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]

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.

Alliance (2/20/04)	The Alliance thinks that if there are some that believe there is confusion in the language of the rule, that any confusion, whether real or imagined, should be resolved in favor of consumers. The word "restored" is not defined in the rules. However, WAC 480-120-021 defines "discontinue" to mean: "the termination of service to a customer". There is no time period stated either in this definition or identified in the rule to indicate that "restoring service" means that the provisions of the rule are meant to apply only for a limited amount of time after a disconnection. If the Commission had meant for the rule to apply only in limited circumstances, we think it would have expressly said as much and it would have defined "restoring service". Finally, as a matter of policy, to limit the applicability of the rule to some limited time period, would be to grossly reduce this important remedy for people that need to reestablish basic phone service. As SNAP argued time and again in it's comments that were submitted as a part of docket UT-990146, basic phone service is an essential tool to helping low-income and vulnerable households improve their lives. This rule provides a reasonable mechanism to obtain basic phone service and also repay companies for prior obligations.
MCI (2/20/04)	MCI asks the Commission to exempt non facilities based providers from any requirement that may be adopted setting a time period by which a customer must be restored after disconnection. A non facilities based carrier, like MCI, which provides residential local service exclusively through UNE-P in Washington, loses connectivity to a customer once the customer is disconnected and is subject to ILEC installation timeframes to reconnect the customer. UNE-P providers also cannot guarantee that the consumer will be able to obtain the same phone number upon reconnection. Because the timeframe by which MCI and other non-facilities based providers is out of the providers' control, a rule should not be imposed upon such carriers that would subject them to fines and/or penalties for failure to comply.
Qwest (2/25/04)	It is Qwest's current policy to provide service to a customer qualifying for treatment under WAC 480-120-173 any time after prior service has been completely discontinued. Qwest would not object to a change in the rule that indicates that the opportunity provided under WAC 480-120-173 is available any time a customer becomes eligible under the rule.

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. *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.*

Alliance (2/20/04)	SNAP first suggested a special repayment rule for WTAP and tribal lifeline eligible households in our comments to docket UT-990146, dated November 5, 2001. In those comments and others filed on November 1, 2002 we identified the importance that such a rule would have in enabling low-income and vulnerable households to begin to improve their lives by reestablishing basic phone service. The proposed rule underwent several modifications, we assume to address the concerns of others, before final adoption.

	Nowhere in the rule text is there any discussion of a limited time period under which customers may avail themselves of the use of the rule. If there had been that intent we think the Commission would have seen fit to state such a limitation, or would have defined "restoring service," but it did not. Indeed, in paragraph 168 of its order under which this rule was adopted the Commission states, "We have adopted a rule that provides for generous repayment terms for prior obligations arising out of local service." WAC 480-120-021 states, '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." The definition places no time constraints on the use of the term. To interpret the rule to work only for a very limited time period would severely limit its use almost to nothing. We think that the available evidence shows that after careful consideration the Commission developed a rule that provides a reasonable mechanism for WTAP and tribal lifeline eligible households to obtain basic phone service and also repay companies for prior obligations.
MCI (2/20/04)	MCI has no comment on this issue at this time.
Public Counsel (2/20/04)	Public Counsel believes that the payment plan provided in this rule should be available to any WTAP or Tribal Lifeline eligible customer at any time. It should not be limited to a specific time period immediately after service is disconnected. The rule as adopted does not restrict the availability of this payment plan to a limited time period after disconnection. We are not aware of any reasonable policy argument to support such an interpretation.
Qwest (2/25/04)	It is Qwest's current policy to provide service to a customer qualifying for treatment under WAC 480-120-174 any time after prior service has been discontinued and the customer has subsequently received TAP eligibility. Qwest would not object to a change in the rule that indicates that the opportunity provided under WAC 480-120-174 is available any time a customer becomes eligible under the rule.

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.

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.

MCI (2/20/04)	MCI requests that the Commission repeal the prohibition against the use of automatic dialing and announcing devices to call unlisted numbers, particularly when the call is placed to a current MCI customer. ADADs are commonly used now by companies to contact existing customers and to leave recorded messages regarding account maintenance. This has proven to be an economic, efficient and convenient way to manage customer service issues, like delinquent accounts. The use of ADADs is not only preferable from the company's perspective but it is also convenient from a customer perspective. Through the use of ADAD and recorded messages, customers are kept informed about account maintenance issues. No compelling reason exists to prohibit companies from using these devices to contact their existing customers, even those whose numbers are unlisted. In addition, MCI agrees with the points raised by Qwest in its request for exemption from this rule. For these reasons, MCI asks the Commission to repeal the rule.
Qwest (2/25/04)	Qwest supports changes to WAC 480-120-253, which regulates the use of ADADs. Qwest would suggest the elimination of the prohibition on dialing unlisted telephone numbers contained in subsection (5)(c). As Staff noted in its Open Meeting Memorandum in Docket No. UT-030273 (Qwest's ADAD waiver petition), the current rule is somewhat unclear in its use of the term "unlisted" and the prohibition on its face limits many beneficial non-commercial uses such as by schools and libraries. As a matter of statute, ADADs may not be used in Washington for commercial solicitation. See RCW 80.36.400(2). The elimination of the "unlisted" prohibition would not impact this statutory prohibition. Qwest has found that the ADAD is a cost-effective and efficient means for providing non-commercial information (that is, information that does not involve commercial solicitation) to its customers, and that without the use of the ADAD, Qwest would be unable to provide such service to its customers. For example, Qwest uses an ADAD to confirm repair appointments with customers, both pre- and post-repair. To manually call those non-list and non-published customers for that program in Washington alone would cost Qwest in excess of a million dollars a year, making the program cost prohibitive. For these reasons, Qwest recommends that WAC 480-120-253(5)(c) be deleted.

Verizon (2/20/04)	Verizon agrees that this rule should be amended to allow for ADAD communication between companies and their existing customers with unlisted telephone numbers that is not solicitation or marketing in nature. The types of notifications listed in the order granting Qwest's waiver in UT-030273 are precisely those that should be referenced so that waivers are not necessary. In addition, some punctuation in subsection (5) may need to be corrected. Subsection (5) states that ADAD calls may be made "only if" and then it sets forth conditions in three subsections. Subsection (a) ends with "; and" so it appears that an ADAD call may be made if the conditions in both (a) and (b) are met. However, subsection (b) ends with a period rather than "and" or "or." Thus, the relationship between the (a) & (b) conditions and the (c) condition is unclear.

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.

The current rule on emergency plans and contacts requires that all telecommunications maintain emergency plans and provide the Commission with contact information. Staff notes that several companies that have no network of their own (pure resellers) believe that the plans and contact information are unnecessary for their companies.

MCI (2/20/04)	MCI has no comments on this issue at this time.
Qwest (2/25/04)	Although it is not clear by the issue description what specific changes are proposed, Qwest is not opposed to modification of WAC 480-120-414 to be more explicit regarding the companies that are required to maintain emergency plans and provide the Commission with contact information.

WAC 480-120-439 Service quality performance reports.

(1) **Class A companies.** Class A companies must report monthly the information required in subsections (3), (4), and (6) through (10) of this section. Companies must report within thirty days after the end of the month in which the activity reported on takes place (e.g., a report concerning missed appointments in December must be reported by January 30).

(2) **Class B companies.** Class B companies need not report to the commission as required by subsection (1) of this section. However, these companies must retain, for at least three years from the date they are created, all records that would be relevant, in the event of a complaint or investigation, to a determination of the company's compliance with the service quality standards established by WAC 480-120-105 (Company performance standards for installation or activation of access lines), 480-120-112 (Company performance for orders for nonbasic services), 480-120-133 (Response time for calls to business office or repair center during regular business hours), 480-120-401 (Network performance standards), 480-120-411 (Network maintenance), and 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages).

(3) **Missed appointment report.** The missed appointment report must state the number of appointments missed, the total number of appointments made, and the number of appointments excluded under (b), (c), or (d) of this subsection. The report must state installation and repair appointments separately.

(a) A LEC is deemed to have kept an appointment when the necessary work in advance of dispatch has been completed and the technician arrives within the appointment period, even if the technician then determines the order cannot be completed until a later date. If the inability to install or repair during a kept appointment leads to establishment of another appointment, it is a new appointment for purposes of determining under this subsection whether it is kept or not.

(b) When a LEC notifies the customer at least twenty-four hours prior to the scheduled appointment that a new appointment is necessary and a new appointment is made, then the appointment that was canceled is not a missed appointment for purposes of this subsection. A company-initiated changed appointment date is not a change to the order date for purposes of determining compliance with WAC 480-120-105 (Company performance standards for installation or activation of access lines) and 480-120-112 (Company performance for orders for nonbasic services).

(c) A LEC does not miss an appointment for purposes of this subsection when the customer initiates a request for a new

appointment.

(d) A LEC does not miss an appointment for purposes of this subsection when it is unable to meet its obligations due to force majeure, work stoppages directly affecting provision of service in the state of Washington, or other events beyond the LEC's control.

(4) **Installation or activation of basic service report.** The report must state the total number of orders taken, by central office, in each month for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The report must include orders with due dates later than five days as requested by a customer. The installation or activation of basic service report must state, by central office, of the total orders taken for the month, the number of orders that the company was unable to complete within five business days after the order date or by a later date as requested by the customer.

(a) A separate report must be filed each calendar quarter that states the total number of orders taken, by central office, in that quarter for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service ninety-day report must state, of the total orders taken for the quarter, the number of orders that the company was unable to complete within ninety days after the order date.

(b) A separate report must be filed each six months that states the total number of orders taken, by central office, in the last six months for all orders of up to the initial five access lines as required by WAC 480-120-105 (Company performance standards for installation or activation of access lines). The installation or activation of basic service one hundred eighty day report must state, of the total orders taken for six months, the number of orders that the company was unable to complete within one hundred eighty days.

Orders for which customer-provided special equipment is necessary; when a later installation or activation is permitted under WAC 480-120-071 (Extension of service); when a technician arrives at the customer's premises at the appointed time prepared to install service and the customer is not available to provide access; or when the commission has granted an exemption under WAC 480-120-015 (Exemptions from rules in chapter 480-120 WAC), from the requirement for installation or activation of a particular order, may be excluded from the total number of orders taken and from the total number of uncompleted orders for the month.

For calculation of the report of orders installed or activated within five business days in a month, orders that could not be installed or activated within five days in that month due to force majeure may be excluded from the total number of orders taken and from the total number of uncompleted orders for the month if the company supplies documentation of the effect of force majeure

upon the order.

(5) **Major outages report.** Notwithstanding subsections (1) and (2) of this section, any company experiencing a major outage that lasts more than forty-eight hours must provide a major outage report to the commission within ten business days of the major outage. The major outages report must include a description of each major outage and a statement that includes the time, the cause, the location and number of affected access lines, and the duration of the interruption or impairment. When applicable, the report must include a description of preventive actions to be taken to avoid future outages. This reporting requirement does not include company-initiated major outages that are in accordance with the contract provisions between the company and its customers or other planned interruptions that are part of the normal operational and maintenance requirements of the company.

The commission staff may request oral reports from companies concerning major outages at any time and companies must provide the requested information.

(6) **Summary trouble reports.** Each month companies must submit a report reflecting the standard established in WAC 480-120-438 (Trouble report standard). The report must include the number of reports by central office and the number of lines served by the central office. In addition, the report must include an explanation of causes for each central office that exceeds the service quality standard established in WAC 480-120-438 (Trouble report standard). The reports, including repeated reports, must be presented as a ratio per one hundred lines in service. The reports caused by customer-provided equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company should not be included in this report.

(7) **Switching report.** Any company experiencing switching problems in excess of the standard established in WAC 480-120-401 (2)(a) (Switches--Dial service), must report the problems to the commission. The report must identify the location of every switch that is performing below the standard.

(8) **Interoffice, intercompany and interexchange trunk blocking report.** Companies that experience trunk blocking in excess of the standard in WAC 480-120-401 (3) (Interoffice facilities) and (5) (Service to interexchange carriers) must report each trunk group that does not meet the performance standards. For each trunk group not meeting the performance standards, the report must include the peak percent blocking level experienced during the preceding month, the number of trunks in the trunk group, the busy hour when peak blockage occurs, and whether the problem concerns a standard in WAC 480-120-401 (3) or (5). The report must include an explanation of steps being taken to relieve blockage on any trunk groups that do not meet the standard for two consecutive months.

(9) **Repair report.**

(a) For service-interruption repairs subject to the requirements of WAC 480-120-440 (Repair standards for service interruptions and impairments, excluding major outages), companies must report the number of service interruptions reported each month, the number repaired within forty-eight hours, and the number repaired more than forty-eight hours after the initial report. In addition, a company must report the number of interruptions that are exempt from the repair interval standards as provided for in WAC 480-120-440.

(b) For service-impairment repairs subject to the requirements of WAC 480-120-440, companies must report the number of service impairments reported each month, the number repaired within seventy-two hours, and the number repaired more than seventy-two hours after the initial report. In addition, a company must report the number of impairments that are exempt from the repair interval standard as provided for in WAC 480-120-440.

(10) **Business office and repair answering system reports.** When requested, companies must report compliance with the standard required in WAC 480-120-133 (Response time for calls to business office or repair center during regular business hours). If requested, companies must provide the same reports to the commission that company managers receive concerning average speed of answer, transfers to live representatives, station busies, and unanswered calls.

(11) The commission may choose to investigate matters to protect the public interest, and may request further information from companies that details geographic area and type of service, and such other information as the commission requests.

(12) If consistent with the purposes of this section, the commission may, by order, approve for a company an alternative measurement or reporting format for any of the reports required by this section, based on evidence that:

(a) The company cannot reasonably provide the measurement or reports as required;

(b) The alternative measurement or reporting format will provide a reasonably accurate measurement of the company's performance relative to the substantive performance standard; and

(c) The ability of the commission and other parties to enforce compliance with substantive performance standard will not be significantly impaired by the use of the alternative measurement or reporting format.

(13) Subsection (12) of this section does not preclude application for an exemption under WAC 480-120-015.

AT&T (2/20/04)	Recent events have brought to light the fact that the Commission interprets this section to apply to competitively classified companies as well incumbent local exchange companies. AT&T sees no need for this rule's application to competitors and has identified ample legal support for its application only to incumbents (and perhaps then only in certain circumstances). Thus, AT&T seeks an opportunity to discuss this rule as well with the stakeholders.
Comcast (2/20/04)	Two rules included in the CR-101 notice of rulemaking are WAC 480-120-021 and WAC 480-120-302. Comcast Phone believes that the WUTC should also consider including WAC 480-120-439 and any rule related to WAC 480-120-439 for modification to reflect that not all facility-based companies have architectures and infrastructures mirroring the ILEC.

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]

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 database, but do not provide service at the location where an error is reported.* *This clarification could be incorporated in the text of the rule.*	
MCI (2/20/04)	This is another issue where non-facilities based CLEC have no control over their ability to comply with such a rule. The ILEC that owns the facilities over which service is provided owns the database in which E-911 service information is stored. Because non-facilities based providers do not have the ability to comply with such a rule, they should be exempted from its application.
Qwest (2/25/04)	Qwest supports incorporating the Commission's interpretive statement into the text of the rule.

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. *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).*	
MCI (2/20/04)	MCI believes that these issues should be addressed as part of the larger issue of intercarrier compensation. MCI requests that the Commission open a proceeding to explore the issues of intercarrier compensation in the context of today's telecommunications marketplace. At a minimum, access charges should be restructured to eliminate all non cost-based rate elements. The intercarrier compensation system should be structured to achieve competitive neutrality, which does not exist in today's structure.
Qwest (2/25/04)	Qwest will await a more definitive proposal before making specific comments on this issue.
Sprint (2/20/04)	Sprint particularly supports a rule change to WAC 480-120-540, Application of terminating access rule to CLECs. As a matter of competitive neutrality and consistent with previous Commission exemptions, this rule should be changed to permit CLECs to charge a terminating access rate up to the amount that Qwest and Verizon charge, including universal service rate elements.

480-120-999 Adoption by reference.	
Verizon (2/20/04)	The Commission rule in this section should allow the use of the most recent versions of the indicated standards. Revisions to industry standards take place on a routine basis. For example, Institute of Electrical and Electronic Engineers (IEEE) standard IEEE-820 is currently undergoing a revision. A new version is expected to be released sometime in late 2004 or early 2005. Likewise, T1.510-1999 is scheduled for revision or reaffirmation in 2004. Communications companies try to stay current with the most recent versions of industry standards. The current version of the National Electrical Safety Code is 2002 not 1991. Obviously, when Commission rules cite a specific version of a standard, particularly an outdated version, problems can arise for national companies. Subsection (4) of this rule, which cites the 1998 version of 47 C.F.R, is a good case in point. If this subsection is not updated to allow use of the most current version of FCC accounting rules, companies will have to petition the Commission each time the FCC makes changes to the USOA.

Chapter 480-122 WAC

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.

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.

Alliance (2/20/04)	The Alliance is not ready to make a recommendation on the modification of this rule. We think the most important consideration is that all residents of Washington, from every part of the state, be able to participate in the program if they are eligible.
MCI (2/20/04)	MCI currently offers WTAP service to low income applicants in Washington. MCI has no comment on Staff's proposal at this time.
Public Counsel (2/20/04)	Public Counsel does not yet have a recommendation regarding whether this rule should be modified to remove the requirement that any local exchange company with more than 100 residential customers offer WTAP service to eligible low-income applicants. As the rulemaking record is further developed, and more information regarding the need and impact of such a change is available, stakeholders will be in a better position to make informed recommendations on this issue.

Qwest (2/25/04)	Qwest awaits a more definitive proposal before making specific comments on this issue. Qwest would state that any proposed changes should be revenue neutral to Qwest and competitively neutral among all providers, including Qwest.

Chapter 480-80 WAC

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]

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.	
MCI (2/20/04)	MCI has no objection to including this information on the title page to its price lists.
Qwest (2/25/04)	In order to be consistent with WAC 480-80-102(1)(f), Qwest supports a requirement in WAC 480-80-204 that price lists include the complete name, address, phone number, unified business identifier, mailing address and web page address of the issuing utility.

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.

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.	
MCI (2/20/04)	MCI has no comments on the proposal on this rule at this time.
Qwest (2/25/04)	To be consistent with WAC 480-80-205, Qwest supports clarifying WAC 480-80-123(3)(c) to mean: *The following types of tariff filings become effective on the later of the effective date stated in the tariff or the date they are filed with the commission: one that introduces a service not previously in the company's tariff; makes changes that do not affect the rates or charges paid by customers; or is a promotional offering.*