

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

Rulemaking to consider amending rules in WAC 480-120, Telephone Companies, WAC 480-121, Registration and Competitive Classification of Telecommunications Companies, WAC 480-122, Washington Telephone Assistance Program, WAC 480-123, Universal Service, WAC 480-140, Commission General – Budgets, and WAC 480-143, Commission General – Transfers of Property, due to competitive changes within the telecommunications to meet consumer, commission and industry requirements no longer applicable under the existing WAC rules;

DOCKET UT-140680

SECOND COMMENTS OF PUBLIC COUNSEL

July 24, 2014

I. INTRODUCTION

1. Public Counsel files these Second Comments in response to the Commission's CR 101 of May 7, 2014, and its Notice of Opportunity To File Written Comments of May 9, 2014 (Notice). The rulemaking is very broad in scope, covering many areas of telecommunications regulation, some involving relatively minor administrative matters, and others involving important policy considerations.
2. Public Counsel's Initial Comments focused on two topics listed in the Notice, carrier of last resort (COLR) obligations and service quality rules, both of which are particularly important for customers. Public Counsel stated it might address other topics at a later time, at the July 28

workshop or in subsequent comments permitted by the Commission. While the Notice posed

certain questions, the Commission Staff also prepared a set of detailed proposed changes in redline which Public Counsel informed Staff it would address separately. Public Counsel therefore respectfully requests approval to file these Second Comments after the initial deadline in order to address the Staff proposals.

3. As in the Initial Comments, Public Counsel urges the Commission to proceed carefully with respect to any changes in the rules which would have the effect of weakening customer protections. A fundamental concern reiterated in these Second Comments is the relationship between potential rule revisions, and the alternative regulatory frameworks adopted recently by Commission order for the two largest incumbent local exchange companies (ILECs) in Washington, CenturyLink and Frontier. Changes could potentially affect over 1 million customers served by these companies.

II. COMMENTS

WAC 480-120-026 Tariffs

4. This revision is overly broad. Some companies that have been competitively classified retain the obligation to file tariffs in certain instances. Public Counsel recommends retaining the existing language, but adding a clause stating: “except where exempt under Commission order or separate Commission rule.”

WAC 480-120-071 Extension of service

5. These proposed amendments are inconsistent with the carrier of last resort obligations retained by Washington’s two largest wireline telecommunications carriers under their existing modified regulatory frameworks, as discussed in Public Counsel’s Initial Comments. The rules limiting the requirement to extend service also do not appear consistent with the statutory

obligation to serve under RCW 80.36.090, which states, in pertinent part: “Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service demanded.” The statute does not limit the obligation to ETCs that receive federal high-cost universal service support. The proposed rule appears to create a potential situation where there is no carrier of last resort for certain customers or for a given area of the state, running contrary to the state’s policy goal of universal service.

WAC 480-120-105 Company performance standards for installation or activation of Access Lines; WAC 480-120-112 Company performance for orders for non-basic service

6. Public Counsel does not support elimination of these baseline standards of performance for installation of service. As noted in Public Counsel’s Initial Comments, the Commission’s framework of service quality regulation and consumer protections was expressly relied on as a basis for the regulatory flexibility approved in the CenturyLink AFOR and the Frontier Competitive Classification Orders.
7. The current rules effectively codify the statutory obligation to service under RCW 80.36.090, and the related requirement in RCW 80.36.080 that telecommunications service be “rendered and performed in a prompt, expeditious and efficient manner.” These statutes remain in effect and applicable to companies serving many Washington telecommunications customers throughout the state. The retention of the rules establishes a reasonable baseline for performance, without which there is a potential race to the bottom, particularly given that competition in Washington is uneven and imperfect. Public Counsel is not aware of evidence

that telecommunications service quality has improved where service quality protections have been eliminated, and there is at least anecdotal evidence to the contrary.

WAC 480-120-339(7) Public meetings

8. Public Counsel recommends retention of the public meeting provision of the rule. Public meetings can provide an important opportunity for public participation in the regulatory process and interaction with the Commission. The rule could be modified to remove the 45 day timeline, and to provide more latitude to the Commission to exercise its discretion as to the need for a meeting in a given case.

WAC 480-120-344 Expenditures for political or legislative activity

9. Public Counsel recommends that this provision be retained in the rules. It serves an important purpose as a statement of public policy on this issue (and parallels the electric industry provision in WAC 480-100-213). While it has not been brought into play frequently in specific cases, in the event the issue does arise, the rule would be available to provide clear guidance. In any event, its presence in the administrative code does not create a regulatory burden on any party.

WAC 480-120-369 Transferring cash or assuming obligations; WAC 480-120-375

Affiliated interests- contracts or arrangements

10. Given the statutory reporting requirements in RCW 80.16.020 for affiliated interest transactions, it appears these rules may still be necessary in some cases.

WAC 480-120-379 Mergers

11. Subsection (2) of the proposed rule exempts competitively classified companies from review of mergers, acquisitions, and sales of exchanges. Public Counsel does not support this

exemption. Chapter 80.12 RCW generally requires review of such transaction except for “small local exchange companies” as provided in RCW 80.12.045. There is no express exemption in chapter 80.12 RCW or in RCW 80.36.320 for competitively classified companies. RCW 80.36.320(2) does generically allow the Commission to waive other regulatory requirements, but only after “it determines that competition will serve the same purpose as public interest regulation.” However, the fact that a company is competitively classified does not mean that a merger, acquisition, or sale of exchanges by that company is per se in the public interest. A merger, acquisition, or sale of exchanges could materially alter the factors which originally led to the competitive classification and could have a significant impact on customers. For example, if Frontier, currently competitively classified, sought to merge with Comcast or another cable provider in its service territory, a number of important public policy considerations would arise, including a potentially significant reduction in competition. The Commission should retain the ability to review each transaction on a case by case basis.

WAC 480-120-389 Securities report

12. Given the statutory reporting requirement in RCW 80.08.040, it appears this rule is still necessary.

WAC 480-120-439 Service quality performance reports; WAC 480-120-440 Repair standards for service interruptions and impairments

13. Public Counsel does not support the elimination of the reporting requirements or the service standards in the proposed rules, for the reasons mentioned in the service quality discussion above. In addition to other benefits, the service quality reports filed with the Commission provide valuable information enabling the Commission, other policymakers,

stakeholders, and the public to evaluate the service quality impacts of an AFOR or competitive classification,

III. CONCLUSION

14. Public Counsel respectfully submits these comments for consideration and further discussion. Public Counsel does not believe it is in the best interests of customers to eliminate or weaken service quality or COLR obligations. In particular, any rule modification should not change or undermine the modified regulatory frameworks already put in place after careful deliberation by the Commission for the largest incumbent companies.