



TO: Dave Danner, Chairman
Phil Jones, Commissioner
Ann Rendahl, Commissioner

FROM: John Cupp, Greg Kopta, Alice Fiman, Jennifer Cameron-Rulkowski,
Jing Roth

DATE: July 12, 2016

SUBJECT: Rulemaking to consider amending, adopting, and repealing certain rules in
WAC 480-120, Telephone Companies

RE: Adoption Hearing, July 18, 2016

RECOMMENDATION

Staff recommends that the commission adopt the revised rules as published in the CR-102 filed with the Code Reviser. Staff also recommends additional changes to WAC 480-120-021 and 480-120-174 as described in this memo.

BACKGROUND

On March 2, 2016, the commission filed a CR-101 to consider reinstating WAC 480-120-440 (as WAC 480-120-441), which was repealed effective April 26, 2015, in UT-140680; to remove or amend references to rules that were repealed or moved in UT-140680; to remove rules and references related to the Washington Telephone Assistance Program (WTAP); and to remove a rule related to the Washington Exchange Carrier Association (WECA).

On March 4, the commission issued a notice of opportunity for the telecommunications industry to file written comments regarding the proposed rule changes. Interested persons filed comments on April 4, 2016.

On May 18, the commission filed a CR-102 with the Office of the Code reviser. On May 20, the commission issued a CR-102 Notice of Proposed Rulemaking and drafts reflecting the changes proposed in the CR-101. Comments were due June 20.

On June 15, CenturyLink requested the deadline for filing comments be extended to July 5. The commission granted the company's request.

STAKEHOLDER COMMENTS

The commission received comments in response to the CR-102 from three stakeholders: CenturyLink, Frontier Communications Northwest, Inc. (Frontier), and the Washington Independent Telephone Association (WITA). None of the stakeholders oppose the proposals to repeal and amend the existing rules specified in the CR-102. The commenting stakeholders, however, disagree with the proposal to reinstate WAC 480-120-440. In addition, CenturyLink continues to propose 480-120-133 be repealed, and WITA recommends a change in 480-120-021 related to the definition of “Order date.” WITA also continues to recommend the commission take action to conform rules to “steps taken by the FCC in Order No. 15-166.”

COMMENTS REGARDING THE REINSTATEMENT OF WAC 480-120-440

1. CenturyLink: “...two months of increased complaints during some of the worst weather events in recent history do not justify adoption of this rule....”

RESPONSE: The data used to show the spike in violations was based on complaints from Jan. 2013 through March 2016. The majority of the violations during this period were noted during the months following the windstorm that hit Spokane in Nov. 2015. These restoral violations were significantly higher than the number staff recorded from the winter storm of Jan. 2012. In Jan. 2012, western Washington experienced a severe winter storm that resulted in a state of emergency also being declared. During the first six months of 2012, staff recorded a total of only four violations of WAC 480-120-440 against CenturyLink entities, including Qwest.

The data that CenturyLink provided in response to the CR-102 indicates a total of 136 outage complaints from May 2015 through April 2016. This is a significant increase from the previous year when CenturyLink identified 30 outage complaints. Staff believes that the repeal of WAC 480-120-440 played a role in the increased number of violations in the April 2015 through March 2016 data.

2. CenturyLink: Force majeure events, not the repeal of WAC 480-120-440, caused longer repair intervals.

RESPONSE: Since the repeal of WAC 480-120-440, staff has used WAC 480-120-411 to govern all outage situations, and that rule does not take into account force majeure events or major outages. The 48-hour restoral requirement in WAC 480-120-440, on the other hand, does not apply if the out-of-service condition is part of a major outage, if the company is physically obstructed from restoring service, or because of force majeure. If the majority of outages since the repeal of WAC 480-120-440 have been the result of force majeure as CenturyLink claims, that rule (had it been in effect) would have resulted in fewer violations.

Staff believes reinstatement of WAC 480-120-440 will benefit the companies by excluding major outages, force majeure events, and situations of physical obstruction. It will benefit staff by separating maintenance related issues and other outage events for compliance tracking purposes. It will benefit consumers who do not or cannot have wireless or VoIP service by providing a specific standard for restoral, especially those customers with security systems or medical alert devices.

3. CenturyLink: "...some repairs simply take more than 48 hours to complete."

RESPONSE: Staff understands this. All of the complaints included in the data in this rulemaking are informal complaints. As such, all violations in the data are alleged violations, which are considered technical assistance. Only in a formal proceeding would violations result in penalties. Staff believes the nature of the needed repair work would be taken into consideration in the event of a formal investigation.

4. CenturyLink: "...the number of complaints overall is still very small and declining..."

RESPONSE: Complaint records show that CenturyLink complaints are increasing annually, as follows:

2012	2013	2014	2015	2016
301	354	382	530	227

While complaint numbers are much lower than they were 15 years ago, the current trend does not show a decline.

5. CenturyLink: The Rule will not enhance compliance or change behaviors.

RESPONSE: Staff cannot guarantee that the company will comply with the rule, or change its behavior if the rule is reinstated. Staff believes company behavior has changed since the rule was repealed. Staff reviewed a sampling of complaints with restoral violations that were opened after the rule was repealed and found 16 complaints where the company received outage calls and gave repair commitment dates over 10 days beyond the 48-hour limit, several were 20 or more days over the limit. Nearly all the commitment times of over 10 days were from Dec. 2015 through Feb. 2016; however, staff did not include any complaints from eastern Washington in the sampling.

A search of complaints with restoral violations opened before 480-120-440 was repealed found occasional commitment dates beyond 48 hours, but none 10 days beyond the limit.

6. CenturyLink: The rule is not necessary. If it were, other states and other utilities would have a similar rule. No other state in CenturyLink's serving area has a rule like the proposed rule.

RESPONSE: WAC 480-120-440 is necessary. In its place, staff has used WAC 480-120-411, which is a network maintenance rule, in all outage situations. Not all out-of-service conditions are related to network maintenance. Using a maintenance rule to track outages makes it difficult for staff to differentiate issues related to poor maintenance from outages caused by unforeseen events.

Other states have rules similar to WAC 480-120-440. For example:

Idaho Telephone Customer Relations Rules: 31.41.01 502.01 requires restoration of 80 percent of outages within 48 hours after report of the outage. If the outage creates an emergency for the customer, service must be restored within 16 hours. More time is allowed when outages are reported on Fridays, Saturdays, or Sundays.

Montana Administrative Rules: 38.5.3371(7) says ninety percent of service trouble reports shall be cleared within 24 hours, excluding Sunday. Exceptions are allowed for lack of access to premises or “where interruptions are caused by unavoidable casualties and acts of God affecting large groups of customers.”

Texas Administrative Code: Substantive Rules Chapter 26.54 Subchapter C(6)(D), requires at least 90 percent of out-of-service reports to be cleared within eight working hours, with exceptions for unavoidable casualties and acts of God affecting large groups of customers.

Code of Colorado Regulations: 4 CCR 732-2 2341(b)(I) require 85 percent of out-of-service reports for each wire center be cleared within 24 hours.

7. Frontier: Reinstating the rule would discriminate against ILECs who face a hyper-competitive industry.

RESPONSE: Staff understands that wireless and unregistered VoIP providers are not subject to commission rules. WAC 480-120-440 applied to all ILECs and CLECs, many with customers who have no access to wireless or VoIP services. Staff believes these customers rely on rules that ensure consistently reliable service. Relaxation of regulation should not discriminate against these customers.

8. WITA: A history that shows no violations does not support reinstating a rule for WITA’s member companies.

RESPONSE: WAC 480-120-440 would apply to all regulated telecommunications companies, not only WITA members.

COMMENTS REGARDING WAC 480-120-133 AND 480-120-021

9. CenturyLink: WAC 480-120-133 should be repealed because it is outdated and unnecessary.

RESPONSE: WAC 480-120-133 is not within the scope of the CR 102, and thus the commission cannot consider it in this rulemaking. Even if that were not the case, the rule addresses “Response time for calls to business office or repair center during regular business hours.” The rule explains how quickly a company representative or automated system must answer a call, and how quickly an automated system must provide an option for a live representative. Staff does not agree that this rule is outdated or unnecessary. Hold times are an ongoing source of frustration for consumers. Relaxing the requirements in this rule is likely to exacerbate the problem.

10. WITA: The definition of “Order date” in WAC 480-120-021 says, “when specific actions are required of the applicant, the order date becomes the date the actions are completed by the applicant if the company has not already installed or activated service.” This language is potentially problematic because the company may not be aware that an applicant has completed the required actions. The company proposes the following language: “when specific actions are required of the applicant, following completion of the required actions, the order date becomes the date on which the company receives notice from the applicant of such completion, if the company has not already installed or activated service.”

RESPONSE: Staff supports this change.

11. WITA: WITA recommends the commission take action to conform its rules to “steps taken by the FCC in Order No. 15-166.”

RESPONSE: As even WITA acknowledges, these rules are outside the scope of the CR 102, so the commission cannot consider them in this rulemaking.

ADDITIONAL RULE AMENDMENT TO WAC 480-120-174

Staff recommends a housekeeping change that was not previously proposed. In a previous telecommunications rulemaking, in Docket UT-140680, WAC 480-120-174 was amended to remove a reference to WTAP. A reference to that information is now obsolete and should be deleted.

CONCLUSION

Staff recommends that the commission adopt the revised rules as shown in Attachment A.

ATTACHMENTS

A – Proposed Rule Revisions

cc: Steve King, Executive Director and Secretary
Pat Hazzard, Director, Safety and Consumer Protection
Greg Kopta, Administrative Law Division
Brian Thomas, Director, Policy
Bridgit Feeser, Assistant Director, Consumer Protection
Jing Roth, Assistant Director, Telecommunications
Alice Fiman, Consumer Protection Manager
Jennifer Cameron-Rulkowski, Attorney General's Office