

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rule-Making
Proceeding Related To

Cessation of Certain
Telecommunications Services:
WAC 480-120-083

DOCKET NO. UT – 010558

Comments of Public Counsel

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Public Counsel files these comments in response to the Commission's June 6, 2001, Notice of Opportunity to File Written Comments regarding the Cessation of Certain Telecommunication Services (WAC 480-120-083).

Public Counsel supports the Commission's efforts to promote public safety by ensuring that no customer is left without basic dial tone and 911 emergency service as a result of a company going out of business or when a company makes a calculated business decision to exit a market. The following comments propose to both modify the existing notice requirements of WAC 480-120-083 and add provisions for a customer transition plan.

Notice Requirements

Public Counsel endorses the existing notice provisions, but would propose the Commission incorporate the following recommendations:

1. *480-120-083(1)*. Subsection (1) should be modified to provide that distressed companies, e.g. those going out of business and/or filing for bankruptcy, give notice at the earlier of (1) the date the company knows with substantial certainty that it will be unable to provide service beyond a specific and ascertainable date, or (2) 30 days prior to the cessation of service. This proposal would seek to maximize the period of time that a customer would have to obtain substitute service under those circumstances when a distressed company may have more than 30 day's foresight.
2. *480-120-083(1)*. Subsection (1) should be modified to provide that the notice period be extended to 60-days for those companies that are making a calculated business decision to stop providing a covered service in a given market. This change would seek to maximize customer notice by recognizing that a company making calculated or strategic decisions will generally have more control over the cessation date than will a company in financial distress.
3. *480-120-083(1)*. Public Counsel would like to resurrect language in Commission Staff's original version of the draft emergency rule that provided for oral notice. The draft provided, "Between seven and five business days before ceasing a covered service, a company must provide oral notice to each remaining customer of the date covered service will be terminated, and provide customers with a company telephone number to call for more information. The company must make at least two attempts to reach each customer and the attempts must be at different times of the day." Public Counsel would advocate including this or similar language in the rule and would have it apply to those circumstances where a customer stands to lose basic dial-tone. As a public safety matter, Public Counsel feels that

one written notice is not sufficient where access to 911 emergency service is at stake, and believes that requiring oral notice would not be unduly burdensome.

4. *480-120-083(1)*. The rule should address the issue of refunds due to customers for deposits and/or any prepaid services such as prepaid calling cards, etc. Further, customers should be notified of the status of any such refunds owed to them.
5. *480-120-083(1)(a)*. The definition of “covered service” under section (1)(a) should be expanded to include broadband services, toll services, voicemail, and call-waiting. By expanding the notice trigger to include key ancillary services such as DSL or voice messaging, this provision would seek to protect those customers who substantially rely on those services, as in the case of a business customer, by putting them on notice of their impending termination.
6. *480-120-083(1)(c)*. Section (1)(c) should be modified to provide that all customer notices be pre-approved by the Commission. Because the circumstances surrounding service terminations may require unique notice requirements, the Commission should have the opportunity to review and evaluate their adequacy. This section should also include language requiring the notice content to be “clear and conspicuous,” or some similar provision, to ensure that written notice is as effective as possible.

Public Counsel believes that maximizing the notice period and designing the notice content to be as informative as possible will encourage swift customer response leaving ample time for successor providers to provision service to a majority of new orders within their normal turnaround times and achieve uninterrupted service to the affected customer.

Transition Plan

Public Counsel is concerned that the existing rule does not address the means by which customers will obtain substitute service. As such, Public Counsel proposes that the rule include provisions for a transition process that outlines how the customers of an outgoing provider will acquire new service. Generally speaking, that process should require that customers be given a list of other potential providers with appropriate contact information, and be notified of the existence of a Commission-designated default provider, or, provider of last resort (POLR). The default provider's primary obligations would be (1) to provide and give priority queuing for *essential* services, and (2) to provide *non-essential* services where existing facilities allow, but without the benefit of priority queuing. For the purposes of these provisions, Public Counsel would define essential services as basic dial-tone and 911 emergency service. Non essential services would be defined as all other covered services defined in section (1)(a), as modified. Priority queuing would be defined as being placed ahead of those existing POLR customers who are (1) waiting for non-essential services, and (2) waiting for essential services but who in the interim are receiving essential services from another provider. Public Counsel's specific suggestions include the following:

1. A new subsection should be inserted to require the outgoing provider to develop a customer transition plan in cooperation with a Commission-designated default provider. The outgoing and default providers should be jointly responsible for the formation of the plan, including customer notice, and the plan should be subject to Commission approval. The outgoing and

default providers should be required to monitor the plan's execution and make periodic progress reports to the Commission.

2. At a minimum the plan should include: (1) A categorized list of all customers including current customers, held order customers, and new applicants for service. The categories should identify customers as resale, facilities-based, wholesale, retail, etc. Where appropriate, the customers should also be categorized by housing development or subdivision; (2) The method by which customers will be transitioned to a new provider, including customer-initiated transitions, resale or lease of the outgoing provider's facilities, build-out of the default provider's facilities, or a combination thereof; (3) The terms and conditions of the arrangement; (4) An estimate of the time the transition plan will take; and (5) The content of the customer notice and the manner in which it will be provided.
3. The initial notice to customers should include a list of other providers in the area accompanied by necessary contact information. The notice should also identify a Commission-designated default provider and set out its obligations to provide service.
4. The default provider should be required to give priority queuing to those customers who make service requests for essential services (basic dial-tone and 911 emergency service) within the notice period. Service requests that are made after the notice period has expired need not be given priority queuing. The default provider would be able to bill the customer at its normal tariffed rates, with the addition of any reasonable installation charges and/or deposits. However, resale customers should be charged only a minimal fee, if anything, for the service transfer.

5. The plan should provide that, within 7 days of the cessation date, the default provider use reasonable efforts to orally contact those customers who have yet to obtain substitute service in a “last-chance” effort to avoid or minimize any disruption in service.
6. Public Counsel is concerned about the possibility that the default provider may not have any facilities in place to service abandoned customers and where the line extension rule may be an inadequate remedy. The rule should address that possibility and set out, at least generally, what course of action should be taken.

Public Counsel recognizes that the transition plan recommendations above impose a certain degree of unsolicited burden on the default provider, particularly with respect to assisting with the plan’s development and providing priority queuing for essential services. This is done with two considerations in mind. First, the burdens imposed are intended to be limited to those necessary to meet public health and safety standards inherent in access to basic dial-tone service and the 911 emergency system. Secondly, Public Counsel is optimistic that properly drafted notice provisions will offer most customers ample time and information to successfully seek substitute service with minimal impositions on the default provider.

Conclusion

Public Counsel looks forward to continued discussion with the Commission Staff and interested parties during the development of this rule to ensure that all Washington citizens have uninterrupted basic phone service and access to the 911 emergency system.