December 13, 2006

TO: Commissioners

FROM: Tom Wilson, Wilford Saunders, Lisa Steel, Tani Thurston, and Greg Trautman

SUBJECT: Pricelist Rulemaking – Changes to Proposed Rules
Docket No. UT-060676

RE: Rule Adoption Hearing – Comments on Proposed Rules (Supplemental CR-102) Adoption Hearing, December 13, 2006, 1:30 – 2:30 p.m.

Background

On March 30, 2006, the governor signed Substitute Senate Bill 6473, eliminating the use of price lists for competitively classified telecommunications services. The new law took effect on June 7.

On May 5 the commission issued a notice of opportunity to file written comments (CR-101) by June 30. Written comments were received from:
1. Trans National Communications International;
2. Verizon;
3. Qwest (including proposed modifications and rationale); and,
4. AT&T, TCG Seattle, TCG Oregon, Integra, and XO (Joint CLECs).

On July 26 draft rule revisions were issued in a CR-102 notice of opportunity to submit written comments by August 23 with notice of a proposed rule adoption hearing September 13. Written comments were received from:
1. Embarq;
2. Joint CLECs;
3. Verizon; and,
4. Qwest.

On October 13 a Supplemental CR-102 was issued with modified proposed rule language. Four written comments were received by the due date of November 14 from:
1. Embarq;
2. Verizon;
3. Qwest; and,
4. Public Counsel.

This memo summarizes comments and describes rule revisions accordingly.

Discussion

Analysis of general comments, and of specific major concerns, is discussed and final proposed changes are summarized in the memo. The marked up text of the rule proposal (including minor recommended edits as discussed below) is attached along with a comment summary matrix.

Revisions to existing rules governing price lists are proposed for three chapters of the administrative code in this rulemaking:

1. WAC 480-80 governing tariffs, prices lists and contracts;
2. WAC 480-120 governing telecommunications company operations; and,
3. WAC 480-121 governing registration, competitive classification, and price lists of telecommunications companies.

Current commission rules promoting customer-friendly operations and service quality are not changed other than to delete reference to the price list filing requirement. There are minor conforming edits as necessary to maintain the cohesive intent of the remaining rules that are applicable to competitive operations as a whole. No new obligations are created by the revisions.

Attention in drafting the revisions is given to removing all rule references applicable to services provided pursuant to competitive classification from WAC 480-80 because that is the chapter of the commission's rules dealing primarily with the procedures governing the filing of rates, terms and conditions of service under RCW 80.36.100. The new law specifically states at RCW 80.36.100(5) that competitive services cannot be subjected to tariff-like procedures. Some rules referencing price lists in WAC 480-80 have more to do with operations, so those rules were revised to delete the price list reference and moved into WAC 480-120 - for example, material was moved from WAC 480-80-202 to NEW SECTION WAC 480-120-266 with minor edits.

Several parties have actively participated and submitted comments during the rulemaking. Most of the comments focused on whether certain existing rules remain appropriate once the price list filing requirement is abolished. Parties submitted general comments about terminology throughout the revisions, as well as specific comments about particular issues such as in opposition to the proposed requirement to post information on an Internet Web site, and about how the commission would handle a complaint.

General Comments

"Competitive Contracts."
Because the rules governing operations frequently reference the tariff or price list on file with the commission as a touch point for implementation of standards and guidelines, simply deleting reference to price lists became problematic in several instances. The revisions address this issue generally by deleting reference to the term "price list" and replacing it with references to concepts flowing from the phrase "information concerning intrastate telecommunications services" that are provided pursuant to competitive classification. Verizon's comments focused, in part, on proposing use of the term "competitive contract" instead of price list where such revisions were necessary. The more conceptual framework developed in the rulemaking works better because it allows carriers the choice to offer competitive services via some form of sales channel other than individual written contracts.

Interim Rules.
Verizon also commented that there is an interim period from June 2006 until June 2007 during which carriers may continue to maintain price lists on file. Verizon noted that if the proposed rules in this rulemaking are made effective prior to the end of the interim period as planned, there will not be any rules governing the maintenance filing of price lists up until the end of the interim. Verizon recommends that the commission should adopt rules for carriers to follow when filing price lists after the proposed rules in this rulemaking take place but before the end of the interim period.

The proposed rules do not address the issue because the statute is clear enough and the commission can give weight to any issues that may arise in the petition form. Meantime, the commission will maintain a copy on the commission's Internet Web site of all affected rules as they were effective prior to the revisions so that carriers who wish to maintain price lists until June 2007 will have guidelines to continue to follow.

Specific Major Concerns.

Investigations.
There was repeated concern in CR-102 and Supplemental CR-102 comments about proposed provisions in New Section WAC 480-120-266(1)(b). Several parties argued that the proposed rule impermissibly expands the scope of the statute because the statute limits the commission's authority to investigate prices for services provided pursuant to competitively classification. As previously mentioned this is an example of current rules that were lifted out of the rules governing filing procedures for tariffs in WAC 480-80 and moved to WAC 480-120. The existing rule was adopted over similar opposition in Docket No. U-991301. In this proposed rulemaking, the phrase "price list" was deleted and replaced with a reference to information about competitive services, and the edited proposed rule was placed in a new section in WAC 480-120. The language in the proposed rule is:

> (b) The commission will, when appropriate, investigate or complain against a rate, term or condition provided pursuant to competitive classification.

The commission's finding in U-991301 is still valid. That is to say, even though the price list filing requirement has been lifted, it is still important to recognize the fundamental differences between services provided under tariff and services provided pursuant to competitive classification.

Rebuttable Presumption.
Parties also strongly opposed proposed revisions to WAC 480-120-266(1)(c) issued in both the CR-102 and the Supplemental CR-102:

> (c) If the commission determines that a rate, term or condition for service offered pursuant to competitive classification is ambiguous, there is a rebuttable presumption that the ambiguity should be construed in the favor of the customer.

Parties pointed out that the proposed language in (c) does not reflect a basic policy consistent with contract law that the ambiguity should only be construed against the drafter of the contract. Establishing this policy is important to eliminate uncertainty for regulated companies and provides incentives to avoid ambiguous or conflicting offers. Accordingly, the final proposal is amended to add appropriate language as follows:

> c) If the commission determines that a rate, term or condition for service offered pursuant to competitive classification is ambiguous, there is a rebuttable presumption that the ambiguity should be construed in the favor of the customer <u>unless the rate, term or condition was not proposed by the company</u>.

The rebuttable presumption language in (c) also ensures that the facts of the case would be fully considered. The rule provision does not apply to alleged ambiguities; it applies to circumstances in which the commission determines that an ambiguity exists. The additional language conforms the rule to contract law.

Internet Posting.
New Section WAC 480-120-266(2) requiring an Internet Web page also drew considerable opposition as proposed in the CR-102 and as proposed with less explicit language again in the Supplemental CR-102. Even though the price list filing requirement was eliminated, proposals for New Section WAC 480-120-266(2) deal with ongoing needs to make information about competitive services available. Pursuant to SSB 6473, the commission's authority to require publication of rates, terms, and conditions is eliminated by RCW 80.36.100(5), and so, in consideration of written comments, we amend the proposal to make information concerning competitive services available upon request, and to make it so customers are informed about how to contact the commission concerning their competitive services. Thus, New Section WAC 480-120-266(2) is proposed to read as follows:

> (2) Following an inquiry or complaint from the public concerning rates, terms and conditions for competitive telecommunications services, a carrier shall specify where to obtain pertinent information, and how to contact the commission.

Description of Competitive Services.
Finally, Public Counsel offered that in light of the elimination of price lists being filed at the commission, new companies entering the market should still make available some minimal information for consumers and the commission. Public Counsel recommends that new companies should list the services they propose to offer and their initial recurring and non-recurring rates. For several years the commission's forms for registration of a new telecommunications company have had a place on them for companies to list such information. Adding the requirement to the rules that registration applicants must list the services they propose to offer is a good idea. However, in light of the clear statutory intent that competitive services be subject to minimal regulation and the specific prohibition under RCW 80.36.100(5) against treating such services like tariffs, the second part of Public Counsel's recommendation to require initial rates is not adopted. Thus, edits to WAC 480-121-020 governing requirements for applications for registration are proposed as follows:

> (2) Applications for registration:
> (a) Must be filed with a petition for competitive classification and a list of its services (~~and an initial price list~~) unless applicant will not be subject to effective competition;

Recommendation
Adopt the rule revisions as described in the Supplemental CR-102 subject to non-substantive modifications as discussed herein and in the attached rule modifications.