

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of

COMCAST PHONE OF WASHINGTON,
LLC

Application for Mitigation of Penalties or
for Stay

In the Matter of

COMCAST PHONE OF WASHINGTON,
LLC

Petition for an Interpretive and Policy
Statement or Declaratory Ruling

Docket Nos. UT-031459 and
UT-031626 (consolidated)

**PUBLIC COUNSEL MOTION FOR
SUMMARY DETERMINATION**

The Public Counsel Section of the Washington Attorney General (Public Counsel) hereby moves for summary determination in this matter, pursuant to WAC 480-09-426(2).

I. INTRODUCTION

Public Counsel submits this motion in response to the issues raised in the Petition for An Interpretive and Policy Statement (Petition) and the Application for Mitigation of Penalties and for Stay filed by Comcast Phone of Washington, LLC (“Comcast” or “Company”) regarding the company’s obligations under the Commission’s service quality rules. For the reasons set forth below, we recommend that the Commission deny Comcast’s request that it be exempted from application of the rules at issue. This motion largely restates the points made in comments previously filed by Public Counsel. Public Counsel will address other matters raised by the December 5 Comcast filing in the reply round.

II. APPLICABLE LAW

As noted in Order No. 02, “[t]here do not appear to be any material facts in dispute” and [t]he parties have agreed that the disputed matters ... can be resolved without the necessity for an evidentiary hearing.” Arguments are to be presented by cross motions for summary judgment. Order No. 02, ¶¶ 9, 10.

The Commission may grant a motion for summary determination if it appears from the pleadings and any properly admissible evidentiary support that there is no genuine issue as to any material fact and the moving party is entitled to summary determination in its favor. WAC 480-09-426(2). In ruling upon a motion for summary determination, the Commission considers the standards applicable to a motion for summary judgment in Civil Rule 56.

III. ARGUMENT

A. The Commission Rules Require CLECs to Meet Service Quality Performance Standards

The Commission’s rules require CLECs to meet certain service quality performance standards. In some instances, more stringent standards are placed on ILECs while more relaxed standards are placed on CLECs, recognizing that non-facilities-based CLECs are largely dependent upon the incumbent carrier for certain service quality performance issues such as completing an order for basic service within five days. For example, with respect to performance standards for the installation and activation of access lines, WAC 480-120-105, CLECs are exempt from the monthly and quarterly performance standards, but CLECs are required to complete one hundred percent (100%) of orders for access lines within 180 days, as set forth in subsection (1)(c) of that rule.¹ By comparison, ILECs are required to comply with all three performance standards established in the rule. Other service quality performance standards, such as repair of out of service conditions, WAC 480-120-440, and standards for the business office and repair answering systems, WAC 480-120-133, apply to all local exchange companies, both ILECs and CLECs.

¹ Comcast’s petition incorrectly asserts that CLECs are exempted from WAC 480-120-105. The rule contains no such exemption by its terms, and CLECs must comply with subsection (1)(c) of that rule. Petition, p.3, n. 2.

B. Commission Rules Require Larger CLECs to File Service Quality Reports

The Commission rules clearly require larger CLECs – those with more than two percent of the state’s access lines – to file service quality reports with the Commission. WAC 480-120-439 requires Class A companies to file monthly service quality reports with the Commission. WAC 480-120-021 defines “Class A” companies as those local exchange companies with more than two percent of the state’s access lines. This definition, as well as the service quality reporting rule, applies to the larger local exchange companies—both incumbent and competitive LECs. There does not appear to be any dispute by Comcast that it meets the definition of a Class A company and a local exchange carrier.

It is entirely appropriate and consistent with the public interest that the reporting requirements in WAC 480-120-439 apply to Comcast because, as described above, several service quality performance standards established in the Commission’s rules apply to CLECs. Since CLECs must meet these service quality performance standards, it makes no sense to read the rules as exempting CLECs from the related reporting requirement. Nor does this it represent an undue burden to require CLECs to report their performance to the Commission. Such reports will allow the Commission to determine whether the larger local exchange companies—both ILECs and CLECs—are meeting the Commission’s performance standards and to protect consumers by undertaking rule enforcement where performance is substandard.

C. Comcast’s Incorrectly Asserts That The Rulemaking Did Not Contemplate Applying the Service Quality Reporting Rule To CLECs

Comcast asserts in its Petition that “nothing in the rulemaking put CLECs on notice that the Commission intended CLECs to be subject to service quality reporting rules.” Petition, p. 5. This claim is incorrect. In its January 23, 2001, Notice in the telecommunications rulemaking docket UT-990146, the Commission released a draft set of rules and a draft set of definitions, and requested written comments by February 14, 2001. The Commission’s draft set of rules released January 23, 2001 included a draft version of the service quality reporting rule, then numbered WAC 480-120-535, which would have required “local exchange companies with fifty

thousand or more access lines” to file monthly service quality reports.² This draft rule clearly applied service quality reporting requirements to larger CLECs and ILECs. Comcast’s petition suggests that none of the CLECs objected to the service quality reporting rule “because CLECs reasonably believed that the Commission did not intend this rule to cover them.” Petition, p. 5. This assertion is also incorrect. For example, in comments dated February 14, 2001, in the rulemaking docket, WorldCom stated in part:

In regards to service quality performance reporting for CLECs, WCOM believes that CLECs should not be held to the same reporting standards as the ILEC for the same reasons stated above. The imposition of such a requirement would impede competition, not enhance it.³

This underlines the fact that CLECs were on notice during the rulemaking proceeding that the Commission intended to apply the service quality reporting rule to competitive providers.

IV. CONCLUSION

In summary, for the reasons outlined above, Public Counsel respectfully requests that the Commission grant its motion for summary determination. Public Counsel further requests that the Commission deny Comcast’s petition to be exempted from the service quality reporting requirements established in WAC 480-120-439, or other relief as sought in Comcast’s October 2, 2003 petition, and order Comcast to comply with WAC 480-120-439. In addition, for the reasons set forth herein, Public Counsel also recommends that the Commission deny Comcast’s application for mitigation of penalties in docket UT-031459. Granting Comcast’s petitions would substantially weaken the service quality reporting rule and is not in the public interest.

DATED this 5th day of December, 2003.

CHRISTINE GREGOIRE
Attorney General of Washington

² The draft set of definitions released by the Commission on January 23, 2001 defined “local exchange company” as “a company providing local exchange service.” This draft definition, which clearly includes CLECs, expressly indicated that the draft service quality reporting rule (then numbered WAC 480-120-535) included the term “LEC.” In addition, this same draft set of definitions included a definition of “Class A” and “Class B” companies that is substantially the same as the definition adopted by the Commission in its General Order No. R-507.

³ Comments of WorldCom Inc. , Docket UT-990146, p. 1, February 14, 2001.

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