

December 5, 2003

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VIA HAND DELIVERY

Ms. Carole Washburn
Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 South Evergreen Park Dr. S.W.
Olympia, WA 98504-7250

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STATE OF WASH.
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**Re: In the Matter of Comcast Phone of Washington, LLC
Docket No. UT-031459/UT-031626**

Dear Ms. Washburn:

Enclosed for filing in the above-referenced matter, please find the original and 13 copies of the Motion for Summary Determination That WAC-480-120-439 Does Not Apply to Comcast Phone of Washington, LLC and that Commission Penalty Be Completely Mitigated.

If you have any questions, please call me at (206) 340-9381. Thank you.

Sincerely,

GRAHAM & DUNN PC



Nancy E. Dickerson
Assistant to Judith A. Endejan

/ned

Enclosures

cc: All Parties
m28633-462104.doc

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of,)	No. UT-031459/UT-031626
COMCAST PHONE OF WASHINGTON, LLC)	MOTION FOR SUMMARY
)	DETERMINATION THAT
)	WAC 480-120-439 DOES NOT APPLY TO
)	COMCAST PHONE OF WASHINGTON,
)	LLC AND THAT COMMISSION PENALTY
)	BE COMPLETELY MITIGATED

I. INTRODUCTION

The central issue in this case is whether the Commission's new service quality reporting rule (WAC 480-120-439) applies to Comcast Phone of Washington, LLC ("Comcast Phone" or "Company"). Comcast Phone contends that it does not apply because it is a competitive local exchange company ("CLEC"). The Commission Staff disagrees and recommended that the Commission issue a penalty against Comcast Phone for not filing July 2003 service quality performance reports under WAC 480-120-439. A penalty of \$1,000 was assessed against Comcast Phone on September 12, 2003. Comcast Phone filed a timely Application for Mitigation of this penalty in Docket No. UT-031459. It also filed a Petition for An Interpretive and Policy Statement Ruling that WAC 480-120-439 Does Not Apply to Comcast Phone of Washington, LLC, or An Order Granting Exemptions From Reporting Regulations in Docket No. UT-031626. This Petition was denied by Commission Order of October 24, 2003, which Order also consolidated Docket Nos. 031626 and 031459. The Commission initiated an adjudicative

MOTION FOR SUMMARY
DETERMINATION -- 1

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proceeding to consider whether WAC 480-120-439 applies to Comcast Phone, and if so, whether the Commission should grant a full or partial waiver and to consider mitigation of the penalty assessment.

Pursuant to the Prehearing Conference Order dated November 21, 2003, Comcast Phone hereby moves for summary determination under WAC 480-09-426(2). Comcast Phone is entitled to a summary determination in its favor on the following dispositive issues:

1. The applicability of WAC 480-120-439 to CLECs, including Comcast Phone;
2. Partial waiver of WAC 480-120-439, if the Commission finds this rule applies to CLECs;
3. Complete mitigation of the penalty assessed by the Commission against Comcast Phone.

II. SUMMARY OF ARGUMENT

WAC 480-120-439 (alternatively, “new rule” or “Reporting Rule”) does not apply to Comcast Phone for several reasons. First, the new rule does not state that it applies to CLECs, but only to “Class A companies.” Second, within the context of WAC Ch. 480-120, and historically, the term “Class A company” has only applied to ILECs. WAC 480-120-439 does not provide otherwise, and therefore it should be read in context with the rest of WAC Ch. 480-120. Third, the Federal Communications Commission’s (“FCC’s”) “Class A/B” categorization only applies to ILECs. Fourth, construing WAC 480-120-439 to apply to CLECs such as Comcast Phone violates state law and public policy which favor flexible and streamlined competition to promote competition. Finally, the public interest would not be served by punishing competitive success with burdensome, costly regulations with no perceivable customer benefit.

If the new rule does apply to Comcast Phone then a partial waiver should be granted and the Company should be allowed to satisfy the new rule by alternative means.

Finally, the penalty assessment should be fully mitigated under existing Commission criteria.

III. BACKGROUND

A. Comcast Phone is a CLEC.

Comcast Phone, while a modest wireline local exchange service provider in comparison with the operations of many Washington ILECs such as Verizon Northwest Inc. and Qwest Communications, Inc., is the leading residential facilities-based CLEC in the state. Historically, the Comcast family of companies (“Comcast”) and its predecessors provided primarily cable video and cable Internet services. Following the merger with AT&T Broadband in November 2002, Comcast Phone added to its portfolio of services the provision of voice-grade telephony services in the State of Washington. Even though Comcast Phone may serve the same or similar number of customer lines as some “Class A” ILECs, Comcast Phone, as discussed below, is a CLEC – not a “Class A company.” As such, the Commission’s new Reporting Rule does not apply to Comcast Phone.¹

B. The Commission Did Not Adopt Any Rule That Requires CLECs to Comply With WAC 480-120-439.

As the result of a lengthy rulemaking proceeding in Docket No. UT-990146, the Commission released General Order No. R-507 in December 2002, which adopted the rule at issue in this case, WAC 480-120-439, requiring the submission of certain service quality performance reports from “Class A companies.”² While the definition of a “Class A company” in WAC 480-120-021 is “a local exchange company with 2% or more of the access lines within

¹ As explained in the Declaration of Rhonda Weaver, filed herewith in Docket No. UT-031459, (“Exhibit A”), Comcast Phone, despite reasonable efforts, was unable to obtain the number of “total state access lines” from the Commission in order to verify whether Comcast Phone’s access lines exceeded the percentage required for a “Class A company” prior to filing its Petition. For purposes of this motion, however, Comcast Phone does not contend that its current access line count is less than the 2% threshold of state access lines as currently calculated. It does so without waiver of its right to contest that it does not exceed the two percent threshold, if access lines increase or are calculated to include wireless access lines.

² WAC 480-120-439(2) lists seven “service quality standards” that must be reported. Of these, one does not exist (480-120-107), two are not service quality standards (WAC 480-120-132, 411), one does not apply to CLECs (WAC 480-120-105) and one cannot apply to Comcast Phone because it is measured on a “central office” basis, which by definition, cannot apply because Comcast Phone’s network architecture does not include its own central offices (WAC 480-120-401).

the State of Washington,” this definition does not state that it applies to a CLEC.³ Likewise, WAC 480-120-439 does not state that it applies to CLECs. Therefore, the new rule does not apply to Comcast Phone, as further discussed below.

IV. ARGUMENT

A. The Term “Class A Companies” In WAC 480-120-439, When Viewed In The Context Of The Entire Chapter, FCC Rules And State Law, Can Apply Only To ILECs.

The applicability of new WAC 480-120-439 hinges upon whether Comcast Phone is a “Class A company.” As further discussed below, usage throughout the entire WAC Ch. 480-120 limits application of the term “Class A company” to ILECs. Furthermore, as WAC 480-120-021 states, its definition of a “Class A company” shall not apply where “the context clearly requires otherwise.” Here, for the following reasons, the context requires that the term “Class A company” be applied only to ILECs with respect to the service quality reporting under WAC 480-120-439.

1. Commission rules that reference a “Class A company” do not apply to CLECs.

The rule at issue in this Petition, namely, WAC 480-120-439, does not define the term “Class A company.” Instead, that definition, as noted above, is found in WAC 480-120-021, which states that the definitions in that section apply “unless there is an alternate definition in a specific section or “**where the context clearly requires otherwise**” (emphasis added). The use of the term “Class A company” in context throughout WAC Ch. 480-120 makes clear that the term applies only to ILECs. For example, the Commission’s new accounting and financial reporting rules in WAC 480-120-302 reserve the use of the “Class A” or “Class B” distinction for companies that are not classified as competitive or that file tariffs, i.e., for ILECs. *See, e.g.*, WAC 480-120-304, 305, 306. By way of further example, the Commission’s new line extension

³ General Order R-507 added this definition without comment on whether it could apply to a CLEC. Had the Commission intended this to apply to CLECs it could have, and should have, stated this application as it did elsewhere in the rules such as WAC 480-120-105. Further, the context within which the term “Class A” has always been understood, and its use throughout WAC Ch. 480-120, limits this definition to ILECs.

rule, WAC 480-120-071(4), applies to “Class A companies” which have in effect a service extension tariff, i.e., to ILECs (inasmuch as CLECs file price lists rather than tariffs).

No new or existing rule specifically ties any “Class A or B” classification to a CLEC.⁴ In fact, the rulemaking that produced WAC 480-120-439 made clear to CLECs, including Comcast Phone, that such a tie could not reasonably be anticipated or expected. That is because the Commission clearly recognized that CLECs and ILECs can and should be held to different service performance standards. For instance, WAC 480-120-105(1)(a) and (b) addresses performance standards and specifically applies only to ILECs. As a practical matter, if the Commission intended to apply the “Class A or B” classification to CLECs for the very first time (changing the historical use of the term as used throughout WAC 480-120), it certainly would have referenced the dramatic change in the rules.⁵

Furthermore, nothing in the rulemaking put CLECs on notice that the Commission intended CLECs to be subject to service quality reporting rules. The key change to the service quality reporting rule that pre-dated WAC 480-120-535⁶, occurred almost three years into the voluminous rulemaking in UT-990146, initiated by a Notice of Opportunity to File Written Comments on April 16, 1999. The first time Commission Staff included Class A/B language in the newly renumbered service quality supporting rule, WAC 480-120-439, was in a Pre-Proposal Draft of February 14, 2002. (Attachment B). This draft reveals:

⁴ This makes sense because the “Class A/B” distinction historically arose as a means to alleviate regulatory accounting burdens for smaller, incumbent companies. This was as a result of the adoption in Washington of the FCC’s Uniform System of Accounts that classified incumbents by size and assigned less onerous accounting requirements to small companies. See In the Matter of Implementation of Uniform System of Accounts by Named Telecommunication Companies, Docket No. U-87-1676-P. 1988 Wash. UTC Lexis 26 (1988).

⁵ To conclude otherwise is to admit that WAC 480-120-439 is not only inconsistent with the rest of WAC 480-120, but also unconstitutionally vague. *State v. Williams*, 144 Wn.2d 197, 26 P.3d, 890 (2001) (the purpose of the vagueness doctrine is to give the citizens of Washington fair notice of what the law expects of them, and to protect citizens from arbitrary laws and enforcement).

⁶ WAC 480-120-535 was enacted to apply beginning June 1, 1993 to local exchange companies, which at that time could have only meant ILECs, the only companies then authorized to provide local exchange service in their service areas. The case of *Electric Lightwave, Inc. v. WUTC*, 123 Wn.2d 530, 869 P.2d 1045 (1994) and, the Telecommunications Act of 1996 post-dated WAC 480-120-535, and opened local exchange markets to competition.

(1) The definitions of “Class A” and “Class B” company, added in the UT-990146 rulemaking, were to apply “except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.”

(2) The very next proposed rule change was to amend WAC 480-120-031/480-120-302, which did provide both an alternative definition for Class A/B companies, and the context within which this term was to be used – for companies not classified as competitive.

(3) This interpretation – that the definition for Class A/B applies only to non-competitive companies – is supported by subsequent usage of the terms throughout the rest of the draft (i.e., use of “Class A” in the rule on access charge and universal service reporting could only refer to an ILEC because CLECs do not file switched access tariffs with the Commission.)

Furthermore, the Commission did not provide an opportunity for written comments on the February 14, 2002 draft, but only allowed for oral comments at the March 27, 2002 special open meeting. (See Attachment C).

If Staff’s view prevails, the Commission would in effect require CLECs to file service quality reports based upon a change in the rules which was not the subject of focused debate or discussion. Indeed, CLECs would essentially be subject to a rule change introduced late in the rulemaking, with respect to which parties were given inadequate notice and opportunity to comment, due to the fact that there was little or no reason for those parties to have believed that rule based on a Class A/B distinction would be applied to them in the future.

Neither the February 14, 2002 Pre-Proposal Draft nor the Adoption Order explains why the Commission or its Staff made the changes to WAC 480-120-535. Given this silence, the history of WAC 480-120-535, and the use of the Class A/B throughout the draft, CLECs reasonably could have concluded that the service quality performance reporting rules were not applicable to them. It is contrary to principles of equity and due process to introduce a new meaning and application of an old term to CLECs such as Comcast Phone, with little, if any, discussion or clear notification of the significant change.

In sum, when one reads WAC 480-120-439 in the context of the rulemaking process and WAC 480-120, it becomes clear that the new rule was not intended to apply to a CLEC.

2. FCC rules support the application of “Class A/B” to ILECs.

The applicability of WAC Ch. 480-120 to Class A and Class B parallels the applicability of those terms found in the Uniform System of Accounts (“USOA”) for Class A and Class B telephone companies. 47 CFR, Part 32. In fact, WAC 480-120-302(2)(a) expressly references Part 32 as the basis for accounting practices applicable to any “Class A and Class B company. Notably, Part 32 applies currently to only *“incumbent local exchange carriers as defined in Section 251(h) of the Communications Act.”* 47 C.F.R. § 32.11 (emphasis added); it does not apply to CLECs such as Comcast Phone.

3. Washington law, public policy, and the public interest support interpreting WAC 480-120-439 as applicable to ILECs only.

The Commission should interpret its rules to give effect to the underlying policy and intent of the Washington Legislature in its telecommunications legislation. The Legislature has mandated that CLECs be subject to minimal regulation (RCW 80.36.320(2)), and that the Commission permit flexible regulation of competitive telecommunications companies. RCW 80.36.300. Imposing unnecessary and costly service quality performance reporting obligations on a CLEC clearly defeats underlying legislative policy and intent.

The fact is the new Reporting Rule is unnecessary because competitive choice protects CLEC consumers from poor service quality. A customer can choose another provider if Comcast Phone’s services do not meet any of the customer’s expectations, including service quality. Further, even if a CLEC serves more than 2% of the state’s total access lines, that certainly does not mean that the provider has market power that would enable it to keep consumers captive to its services and that would deny consumers competitive options. Indeed, there is no reason to believe that customers will benefit in any way from imposing new reporting requirements on Comcast Phone. Therefore, the new rule does not address public concerns or interest.

Customers may, in fact, be disadvantaged by burdening Comcast Phone with costly new regulation which is not the streamlined, flexible regulation intended by the Legislature for CLECs. Instead of continuing to devote its resources to the improvement of its business

operations, Comcast Phone will have to devote valuable resources to complying with the new rule, as well as to upgrading existing tracking systems and databases in order to produce data and reports specifically tailored for the specified reporting requirements (which, in some cases, are designed for particularities of ILECs operations as opposed to CLEC operations), with no perceivable customer benefit. Comcast Phone's competitive success should not be "rewarded" by the imposition of new, burdensome regulations. Therefore, this Commission should interpret WAC 480-120-439 to minimize harm to its competitive policies and those of the Legislature.

4. The Commission should interpret WAC 480-120-439 rationally and sensibly to preclude application to a CLEC.

The Commission should follow the rules of statutory construction that also apply to administrative rules and regulations. *Dept. of Licensing v. Cannon*, 147 Wn.2d 41, 50 P.3d 627 (2002). Administrative regulations are to be interpreted as a whole, giving effect to all language and harmonizing all provisions. *Id.* In other words, the new rule is to be interpreted in context, which means that Class A is intended as a classification only for ILECs, as discussed above.

The Commission should interpret WAC 480-120-439 rationally and sensibly, in a manner that does not result in unlikely, absurd or strained consequences. *Id.* Interpreting WAC 480-120-439 to apply to Comcast Phone as a CLEC violates that principle. This is best illustrated by the fact that WAC 480-120-439(4) would require Comcast Phone to report on a service quality performance measure that it is exempt from under WAC 480-120-105(4). This rule sets performance standards for installation or activation of access lines that do not apply to CLECs. Clearly, this constitutes an absurd or strained consequence, yet this will be the result if the Commission interprets the new rule as applicable to CLECs, as advocated by the Commission. If the purpose of WAC 480-120-539 is to enable the Commission to monitor compliance with service standards, this purpose is not fulfilled by requiring reports which have no bearing on compliance.

In sum, the Commission should rule that Comcast Phone is not subject to the reporting requirements of WAC 480-120-439.

B. If The Commission Applies WAC 480-120-439 To Comcast Phone, An Exemption Should Be Granted.

Pursuant to WAC 480-120-015(1), the Commission may grant an exemption from provisions of a new rule if such an exemption is consistent with the public interest, the purpose underlying regulation, and applicable statutes. The same reasons for interpreting WAC 480-120-439 as inapplicable to Comcast Phone warrant a permanent exemption from its terms for Comcast Phone if the Commission were to disagree with Comcast Phone's reasonable interpretation.

When determining whether to grant an exemption, the Commission may consider whether the application of the rule would impose undue hardship on the requesting party. WAC 480-120-015(4). Historically, the Comcast family of companies (of which Comcast Phone is a part) and its predecessors have provided primarily cable video and cable Internet services. However, in November, 2002, Comcast began to offer voice-grade telephony services through Comcast Phone. As a result of its history, the company's internal measurement and reporting systems are not like those of ILECs. They cannot track and produce all of the information needed to report under WAC 480-120-439.

The Declaration of Rhonda Weaver filed in Docket No. UT-031459, attached as Exhibit A herewith, explains how and why Comcast Phone cannot comply with the reporting requirements of WAC 480-120-439 without undue hardship. While Comcast Phone could comply with two of these requirements (the "missed appointment" and "repair" reports of WAC 480-120-439(3) and (9)), it would need time to implement a new manual tracking process to capture the necessary data. Even these reports would be provided at considerable expense. Comcast Phone could never technically comply with the remaining reporting requirements in WAC 480-120-439(4), (6), (7) and (8). That is because those reports are premised upon "central offices," which Comcast Phone does not have in its network architecture. Therefore, at the very least, if the Commission resolves the interpretive question against Comcast Phone, the Company requests a temporary exemption from the first two requirements and a permanent exemption from

the rest.⁷ In addition, the reports called for by subsections (7) and (8) would require information that Comcast Phone does not have. Such information is only available from the third party that provides an aggregate service, including switching and transport services, to Comcast Phone.

Recently the Commission granted Qwest Corporation's Petition for Waiver and Alternate Method of Reporting of WAC 480-120-439(4) in Docket No. UT-030704. See *In the Matter of the Petition of Qwest Corporation*, Docket No. UT-030704, Order No. 01 (Sept. 10, 2003). This Order clearly shows that the Commission will not force a company to do something it cannot do. Qwest is unable to report by orders taken as required by WAC 480-120-439(4). The Commission waived that requirement and allowed Qwest an alternative means of reporting utilizing in-place methods. So too, in this case, Comcast Phone cannot report by central office, but only by rate centers, if it is required to comply at all with WAC 480-120-439, and it should be allowed to provide alternative reports based on existing methodologies.

Comcast Phone requests that the Commission allow it to devise alternative measurements and reports to satisfy all reporting requirements of WAC 480-120-439. Because Comcast Phone cannot currently provide the measurements required by Sections (3), (4), (9), (6)-(10) of WAC 480-120-439, the Commission should approve a permanent "alternative measurement" which allows Comcast Phone a reasonable opportunity to comply with the new rule without extreme disruption to its business.

Under WAC 480-120-439(12), when a company cannot reasonably provide the measurements or reports as required, the Commission may approve an alternative measurement or reporting format. The rules recognize that allowances should be made if a company cannot reasonably comply with the rule's requirements. WAC 480-120-015; WAC 480-120-439(12).

⁷ This Commission has allowed other temporary exemptions to the application of its new rules. *See, e.g.,* Order Denying Petition for Permanent Exemption and Granting Temporary Exemption, Docket No. UT-031123, Order No. 1. *In the matter of the Petition of Verizon Northwest, Inc. Seeking Exemption from WAC 480-1120-104 Relating to Information to Consumers.*

This means that if Comcast Phone is required to provide any service quality reports, it should be allowed to provide (1) reports consistent with its network architecture; (2) quarterly reports instead of monthly reports; and (3) reports based upon statewide averages, which would include data from Comcast Phone's Portland, Oregon market. (Comcast Phone's businesses in Portland, Oregon and Vancouver, Washington customers are run as a single market for internal data collection, reporting and other purposes.)

C. The Penalty Assessment Should Be Fully Mitigated.

1. Factual Background: Comcast Phone contested in good faith the applicability of the new rule and did not knowingly, intentionally violate it.

As stated above, Comcast Phone properly interpreted the term "Class A company" in WAC 480-120-439 as applying only to ILECs and not to CLECs such as Comcast Phone because the only context in which the rules use the terms "Class A" or "Class B" is in relation to an ILEC. Therefore, Comcast Phone did not file any service quality performance report for July 2003, because Comcast Phone was trying to work out its good-faith dispute with Staff over the new rule's application, and Comcast Phone has not filed any service quality performance report since that time, because this matter is still in dispute and awaiting resolution by Commission.

In a Staff e-mail sent to Comcast Phone first advising the Company that it might be subject to the new WAC 480-120-439, Staff said that WAC 480-120-302 would settle whether Comcast Phone is a Class A company.⁸ This rule lays out "accounting requirements for companies not classified as competitive." The other financial records and reporting rules that mention Class A or B also refer only to either companies that are not classified as competitive or that file tariffs. *See*, WAC 480-120-304, 305, 306. The foregoing rules clearly exclude any CLECs that are in all cases competitive and that file price lists (as opposed to the tariffs filed by the ILECs) and therefore did not settle the question of whether Comcast Phone is covered by WAC 480-120-439. Nonetheless, Staff persisted in its view that the service quality requirements

⁸ *See* Attachment A to Weaver Declaration.

of WAC 480-120-439 apply to Comcast Phone because Staff considered Comcast Phone to be a "Class A company." Comcast Phone's Director of Governmental and Regulatory Affairs for Washington, Rhonda Weaver, explained to Staff Comcast Phone's view that, as a CLEC, it is not a Class A company, as previously discussed in Section B above. Ms. Weaver explained to Staff that the service quality reports required by WAC 480-120-439 require compilation of metrics that Comcast Phone does not currently track and that it cannot currently track. Ms. Weaver advised Staff that it would be expensive and unduly burdensome for Comcast Phone to modify its systems and train its employees to comply with the new reporting rules without any proven or concomitant benefit to Comcast Phone's subscribers or the public interest in general.

Staff advised Ms. Weaver to petition the Commission for a declaration that the reporting requirements of WAC 480-120-439 did not apply to CLECs or to seek a waiver. Comcast Phone was in the process of preparing this pleading, which was filed in Docket No. 031626, at the time it received the penalty in position on September 15, 2003.

2. The Penalty Does Not Satisfy the Commission's Standards.

Under the legal standard established by the Commission, the penalty against Comcast Phone is not appropriate. In *MCI Metro Access Transmission Services, Inc. v. U.S. West Communications West, Inc.*, 1999 W.L. 132851 (Feb. 10, 1999), the WUTC articulated eight criteria to guide its decision whether to impose penalties. They are:

- (1) the offending conduct was associated with new requirements of first impression;
- (2) the offending party should have known its conduct constituted a violation;
- (3) the offending conduct was knowing or intentional;
- (4) the offending conduct was gross or malicious;
- (5) repeated violations occurred;
- (6) the Commission previously had found violations;
- (7) the offending conduct improved; and
- (8) remedial steps were undertaken.

In this case, these criteria dictate the elimination of the penalty against Comcast Phone. First, as explained above, Comcast Phone's "offending conduct" is associated with requirements of first impression –rule WAC 380-120-439. Comcast Phone had, and continues to have, a good faith, reasonable belief that the new rules apply only to Class A/B ILECs - and not to CLECs. It had sought in good faith to ask this Commission for clarification that its understanding is correct for legal and public policy reasons. These reasons were laid out in its Petition for Interpretative and Policy Statement, or Declaratory Ruling, a step that Commission Staff recommended Comcast Phone take, and if ultimately, the Commission determines that WAC 480-120-439 is applicable to Comcast Phone, the Company should be exempt from these requirements.

With respect to the second, third and fourth criteria, Comcast Phone, given its understanding to date, could not have known that its conduct constituted a violation or that its "offending" conduct was either knowing or intentional, or gross or malicious.

Further, no repeated violations have occurred or been found, so the fifth and sixth factors are absent. Comcast Phone should not be penalized for failing to file reports during the pendency of this dispute. And, with respect to the seventh criteria, Comcast Phone does not believe that it has engaged in "offending conduct." Finally, as to the last factor, Comcast Phone undertook steps to have this Commission clarify further that the definition of Class A companies applies only to ILECs.

Imposition of the penalty here is clearly arbitrary and capricious. The Ninth Circuit recently vacated penalties assessed against Verizon Communications on this basis, where Verizon refused to pay for ISP-bound traffic based upon its understanding of the application of an interconnection agreement's reciprocal compensation provisions. *See, Verizon Northwest Inc. v. WorldCom*, 2003 W.L. 1827229 (9th Cir. April 7, 2003).

3. This Penalty Thwarts the Intent of the Legislature that Agencies Educate and Assist Before Imposing Penalties.

In addition to failing to meet the criteria for imposition of a penalty, the penalty imposed by the Commission should be mitigated because the leveling of a fine while parties are

discussing compliance issues in good faith contravenes the spirit and intent of the Washington State Administrative Procedure Act as revised by the Regulatory Reform Act of 1995 (“WSAPA”), RCW A34.05001-43-05.903.

When enacting the Regulatory Reform Act of 1995, the Legislature stated that “in order to achieve greater compliance with administrative rules at less cost, that a cooperative partnership exist between agencies and regulated parties that emphasizes education and assistance before the imposition of penalties.” 1995 Wash. Laws 403 § 1(f). The legislative directive of “education and assistance before penalties” is especially appropriate here because this is the first time that the Commission has ever attempted to subject a CLEC to the service quality reporting rules at issue, and because Comcast Phone was still participating in the educational phase of the process when the penalty was assessed.

The Declaration of Rhonda Weaver filed herewith establishes that Comcast Phone was meeting and communicating with Staff in good faith as late as September, 2003. Comcast Phone informed Staff that it intended to ask the Commission for a ruling on whether a CLEC could be considered a Class A company subject to WAC 480-124-39. The parties were clearly still in discussion about compliance issues when the penalty was issued. This action does not comport with the directive of “education and assistance before penalties.”

Second, during these good faith discussions, Staff never mentioned the possibility of a Commission penalty for an alleged failure to comply with the reporting regulations. If the Commission had truly followed the “education and assistance before penalties” policy, Comcast Phone should have been notified about the possibility long before it was actually assessed.

Finally, the inappropriateness of this penalty is highlighted by the fact that Staff refused to “assist” by failing to provide the data necessary for Comcast Phone to verify even the facts associated with a Class A categorization. In order to determine whether this is proper, Comcast Phone needs the Washington state access line count as required by WAC 480-120-320(1)(c). Subsection (1)(c) of that rule requires the Staff to provide the data necessary for a company to

determine if it would qualify as a Class A company, assuming for the sake of argument that such a classification could apply to a CLEC. Staff has this data readily available but has refused to provide it. As a matter of common sense and equity for purposes of calculation, all companies subject to this classification should have access to the same "total state access lines" figure. See Declaration of Rhonda Weaver.

V. CONCLUSION

For all the foregoing reasons, the Commission should clarify that new WAC 480-120-439 does not apply to Comcast Phone and the penalty assessed against Comcast Phone should be eliminated in its entirety.

RESPECTFULLY SUBMITTED this ____ day of December, 2003.

GRAHAM & DUNN PC

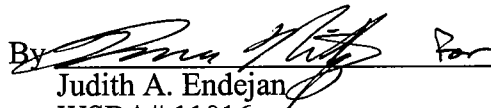
By  For _____
Judith A. Endejan
WSBA# 11016
Email: jendejan@grahamdunn.com
Attorneys for Comcast Phone of Washington, LLC

EXHIBIT A

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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

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5
6 BEFORE THE WASHINGTON UTILITIES AND
7 TRANSPORTATION COMMISSION

8 In the Matter of) Docket No. UT-031459
9 COMCAST PHONE OF WASHINGTON, LLC) **DECLARATION OF RHONDA WEAVER**
10)
11)
12)

13 1. I, Rhonda Weaver, make this Declaration based upon personal knowledge:

14 2. I am the Director of Governmental and Regulatory Affairs for Comcast Phone of
15 Washington, LLC ("Comcast Phone" or "Company"). My business address is 440 Yauger Way
16 SW, Olympia, Washington 98802.

17 3. As part of my duties and responsibilities, I am charged with being knowledgeable
18 about proceedings of interest to Comcast Phone before the Washington Utilities and
19 Transportation Commission ("Commission"). This includes the rulemaking proceeding in
20 Docket No. UT-990146 that significantly revised the rules applicable to telephone operations. I
21 reviewed the new rules with the Company to ensure that our telephony operations would be able
22 to comply, once the rules took effect on July 1, 2003. The Company was able to comply with all
23 rules that we understood to apply to its operations. Neither I nor anyone else within the
24 Company believed that WAC 480-120-439 regarding service quality performance reports applied
25 to Comcast Phone because it is a competitive local exchange company ("CLEC"). We believed
26

DECLARATION OF RHONDA WEAVER -- 1

GRAHAM & DUNN PC
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1 in good faith that this rule only applied to incumbent local exchange companies (“ILECs”) and
2 that only ILECs could be classified as Class A or Class B.

3 4. I was first advised by Commission’s Staff on Thursday, July 17, 2003 that it
4 believed that Comcast Phone is a Class A company under WAC 480-120-302 and that it must
5 comply with the reporting requirements in WAC 480-120-439. *See Attachment A.*

6 5. I was concerned, and disagreed with that position because the rule that the Staff
7 claimed rendered Comcast Phone a “Class A” company (WAC 480-120-302) applies only to
8 “companies not classified as competitive” – and not to Comcast Phone, which is a *competitive*
9 local exchange company. I also could not verify that Comcast Phone could even be classified as
10 a Class A company based upon its percentage of “total state access lines.” This number was in
11 WAC 480-120-302, but it was over four years old.

12 6. I immediately contacted Staff to discuss the service quality reporting issues and to
13 get the data necessary to determine the most recent “total state access lines.” I was told that in
14 order to get this information, I would have to request all company annual reports from the
15 Records Center and compile the information myself. Staff suggested I use data from the state
16 Department of Revenue compiled for payment of E-911 taxes, which showed 3,412,593 access
17 lines as of 12/31/02. *See Attachment B.*

18 7. In order for me to compile an accurate figure for the “total state access lines”
19 based upon filed company annual reports, I would have to request over 500 annual reports from
20 the Records Center. Many of these reports are filed as “confidential.” In order to get these
21 confidential reports, the Commission and Comcast Phone would have to follow the procedure of
22 WAC 480-09-015(7). This would be unduly burdensome for both Comcast Phone. I asked Staff
23 if it could review these reports and come up with an appropriate “total state access lines,” based
24 on the fact that Staff is in the best position to do so because it has better access to these filed
25 company reports than Comcast Phone. Staff could compile the total state access line number by
26 aggregating the raw data. While Staff initially suggested it could compile this figure, Staff

DECLARATION OF RHONDA WEAVER -- 2

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1 subsequently refused to do so. Instead, Staff referred me to another figure from the FCC that
2 calculated "total state access lines" at 3,960,744 (500,000 more lines than the DOR reported).
3 See Attachment C. To date, Comcast Phone has not been able to verify the most recent data with
4 the Commission on "total state access lines." It is possible for the number of access lines
5 reported to either the FCC or DOR to understate or overstate significantly the number of lines.

6 8. Assuming that the number of Comcast Phone access lines exceeds 2% of "total
7 state access lines," Comcast Phone still does not interpret WAC 480-120-439 as applying to it. I
8 explained this position in a series of e-mails (at least 8), telephone meetings (at least 3) and a
9 face-to-face meeting with Staff between July 17, 2003 and early September 2003. I told Staff
10 that Comcast Phone would request a declaratory ruling from the Commission on the applicability
11 of WAC 480-120-439, or, in the alternative, request a waiver, because Comcast Phone cannot
12 currently comply with all of that rule's reporting requirements. Comcast Phone was working on
13 this filing when we received a Penalty Assessment on September 15, 2003. At no time during
14 my communications with Staff did Staff ever indicate it would seek a penalty for Comcast
15 Phone's "noncompliance" with WAC 480-120-439.

16 9. Comcast Phone at no time has knowingly or intentionally violated WAC 480-120-
17 439. In good faith, Comcast Phone contests applicability of the rule to it because it is a CLEC.
18 By a separate filing to be made on or before October 2, 2003, Comcast Phone will ask the
19 Commission to make a ruling on this applicability or to waive it as to Comcast Phone. As
20 explained below, Comcast Phone cannot currently comply with this new service quality reporting
21 rule.

22 10. Historically, the Comcast family of companies (of which Comcast Phone is a part)
23 ("Comcast") and its predecessors have provided primarily cable video and cable Internet
24 services. However, in November 2002, Comcast began to offer voice-grade telephony services
25 as Comcast Phone. As a result of its history, the company's order fulfillment process and
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DECLARATION OF RHONDA WEAVER -- 3

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1 internal measurement and reporting systems are not like those of ILECs. They cannot track and
2 produce all of the information needed to report under WAC 480-120-439.

3 11. If the Commission finds that Comcast Phone is subject to WAC 480-120-439,
4 Comcast Phone cannot comply with the following sections because of the nature and history of
5 Comcast's operations:

6 (a) WAC 480-120-439(3) ("Missed appointment report"). Because Comcast
7 provides cable video, cable Internet and telephony, its current systems do not, and cannot,
8 separate a missed appointment for just telephony. In order to comply with this rule, Comcast
9 would have to develop enhancements to its current system to produce this report. Comcast
10 Phone has not fully quantified all of the costs associated with these enhancements and Comcast
11 Phone believes they could be significant, possibly into six figures. Further, development would
12 take up to approximately six months to implement. Thereafter, Comcast would have to train and
13 assign employees to produce this monthly report at additional ongoing expense.

14 (b) WAC 480-120-439(4) ("Installation or activation of basic service").
15 Comcast Phone is not subject to the company performance standards for installation or activation
16 of access lines contained in WAC 480-120-105 because it is exempt as a CLEC. Thus, it makes
17 no sense for Comcast Phone to have to report on its performance under a standard from which it
18 is exempt. Staff nevertheless told me that they wanted this report. It is not possible for Comcast
19 Phone to provide this report because the basis for measurement is "by central office." Comcast's
20 network architecture does not include a "central office," as defined by the rules. Comcast Phone
21 leases switching capacity from a third party. Thus, Comcast Phone simply cannot provide the
22 report called for in this subsection.

23 (c) WAC 480-120-439(6), (7), (8) ("Summary trouble reports," "switching
24 reports" and "trunk blocking report"). As stated above, because Comcast Phone does not have
25 "central offices" within its network architecture, it cannot produce these reports.
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DECLARATION OF RHONDA WEAVER -- 4

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1 (d) WAC 480-120-439(9) ("Repair report"). Comcast does not separately
2 track service calls for its cable video, cable Internet or telephony lines of business. Therefore, it
3 would have to revise its existing service quality measurement system to separate out a metric for
4 telephony. This will involve considerable upfront and ongoing expense similar to that for
5 WAC 480-120-439(3) ("Missed appointment report").

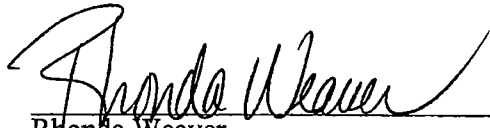
6 (e) WAC 480-120-439-10 ("Business office and repair answering system
7 reports"). Comcast tracks service quality by market area, such as Portland or Seattle. Therefore,
8 service quality metrics for Vancouver, Washington would be contained in the measurement for
9 the Portland, Oregon market, which are treated as a single market by Comcast. Separating out
10 this data would involve considerable time and expense.

11 12. As Paragraph 11 establishes, Comcast Phone either cannot technically comply
12 with the reporting requirements of WAC 480-120-439 or it would be unduly burdensome for it to
13 do so. Comcast Phone would have to modify existing systems at great expense to capture new
14 data, train employees and produce the new reports.

15 13. Comcast Phone does not have a recent pattern of service quality complaints
16 regarding the service quality which is the subject of the reports called for by WAC 480-120-439.
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1 I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE
2 OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

3
4 EXECUTED at Seattle, WA, this 29 day of September,
5 2003.

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7 
8 Rhonda Weaver

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ATTACHMENT A

Dickerson, Nancy E.

From: Bob Williamson [BWilliam@wutc.wa.gov]
Sent: Thursday, July 17, 2003 2:58 PM
To: Weaver, Rhonda
Cc: Erin Hannan; Glenn Blackmon; Kristen Russell
Subject: Class A Telephone Company

Hello Rhonda,

It is the Commissions understanding that Comcast serves approximately 117,000 working residence telephone access lines in Washington State. That means that Comcast serves more than 2% of the access lines in this state. According to WAC 480-120-302 that would make Comcast a Class A company. Class A companies must report monthly the information required in WAC 480-120-439 subsections (3), (4), and (6) through (10).

We would like to discuss these requirements with you at your earliest convenience.

Hope you are doing well in your new job. I wish the first contact would have been over something more enjoyable. Please contact me (360)664-1288 or Erin Hannan (360)664-1349 to discuss further.

Regards,

Bob Williamson
Senior Member Technical Staff
Washington Utilities and Transportation Commission
(360)664-1288

ATTACHMENT B

Dickerson, Nancy E.

From: Weaver, Rhonda [Rhonda_Weaver@cable.comcast.com]
Sent: Friday, July 18, 2003 2:34 PM
To: 'Glenn Blackmon'
Subject: RE: Access lines

Glenn,

Next week is fine. My schedule is fairly flexible so let me know what works for you and I'll work around it. I'm leaving for NARUC Friday morning so if we could meet earlier in the week I'd appreciate it.

As for requesting the raw data from the records center, I don't mind requesting it, but I understand that many companies file annual reports as proprietary. It makes sense to have staff compile the total numbers and publish the findings so that companies can determine 2% of the state access lines. WAC 480-120-302 does not refer companies to the Department of Revenue to collect this data, but to the WUTC records center.

In any event, I look forward to discussing these issues with you.

Rhonda Weaver
Director - Government Affairs
Comcast
360 705-2537 X 3404 (voice)
360 280-4780 (cell)
Rhonda_Weaver@cable.comcast.com

-----Original Message-----

From: Glenn Blackmon [mailto:blackmon@wutc.wa.gov]
Sent: Friday, July 18, 2003 12:08 PM
To: Weaver, Rhonda
Subject: Access lines

Rhonda,

I'm swamped with Qwest Dex matters today and so will need to wait about discussing the service quality reporting issues with you. Maybe we could meet next week.

In the meantime, I wanted to move things along on the data side. First, the "raw data" that may be requested from the records center, pursuant to the rule, is the company annual reports. I understand that you don't really want the entire report, but that's where the numbers are. I'm going to try to have someone compile the access line numbers, so that we could publish a non-confidential total figure, but we are not actually required to do that.

However, I also want to offer you what I consider to be a reliable count of access lines in Washington. According to data supplied to us by the state Department of Revenue, there were 3,412,593 access lines as of 12/31/02. This is the number of switched access lines that telecom companies reported in paying E-911 taxes to the state. Using that number, the cutoff between Class A and Class B would be at 68,252 lines.

Let's talk next week.

Regards,
Glenn

ATTACHMENT C

Dickerson, Nancy E.

From: Glenn Blackmon [blackmon@wutc.wa.gov]
Sent: Monday, July 28, 2003 5:32 PM
To: Weaver, Rhonda
Subject: Comcast service quality reports

Rhonda,

I would like to follow up on our meeting last week to discuss Comcast's filing of service quality reports.

As I understand it, the biggest question about whether Comcast must report under WAC 480-120-439 has to do with whether it is a "Class A company," a "Class B company," or neither. If it is a Class A company, it must file performance reports. If it is a Class B company, it must maintain records of its performance for inspection by the WUTC. If it is neither Class A nor Class B, then it is not subject to 480-120-439 at all.

We discussed the definition of these two terms in WAC 480-120-302 Accounting rules for companies not classified as competitive. The argument, as I understand it, is that since 480-120-302 applies only to non-competitive companies, a competitive company would be neither a Class A company nor a Class B company.

After the meeting I read the rules again, and I am glad to report that they are not as muddled as that reading would suggest. "Class A company" and "Class B company" are defined in WAC 480-120-021 Definitions. (I'm attaching a copy.) This rule defines a Class A company to be "a local exchange company with two percent or more of the access lines within the state of Washington." This definition is in no way limited to non-competitive companies. Comcast, as a local exchange company, has to be either a Class A company or a Class B company.

The question about whether Comcast is Class A or Class B is a factual one. I am aware of no evidence that would support the claim that Comcast is a Class B company. The FCC recently reported (http://www.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/lcom0603.pdf)

that ILECs and CLECs together have 3,960,744 access lines in Washington state. That would put the cutoff between Class A and Class B at 79,215 lines.

I look forward to hearing from you about how Comcast wants to proceed on this issue.

Regards,
Glenn Blackmon

WAC 480-120-021 Definitions. The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

"Access charge" means a rate charged by a local exchange carrier to an interexchange carrier for the origination, transport, or termination of a

call to or from a customer of the local exchange carrier. Such origination, transport, and termination may be accomplished either through switched access service or through special or dedicated access service.

"Access line" means a circuit providing exchange service between a customer's standard network interface and a serving switching center.

"Affiliate" means an entity that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another entity.

"Ancillary services" means all local service features excluding basic service.

"Applicant" means any person applying to a telecommunications company for new service or reconnection of discontinued service.

"Average busy hour" means a time-consistent hour of the day during which a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Basic service" means service that includes the following:

- * Single-party service;
- * Voice grade access to the public switched network;
- * Support for local use;
- * Dual tone multifrequency signaling (touch-tone);
- * Access to emergency services (E911);
- * Access to operator services;
- * Access to interexchange services;
- * Access to directory assistance; and
- * Toll limitation services.

"Business" means a for profit or not-for-profit organization, including, but not limited to, corporations, partnerships, sole proprietorships, limited liability companies, government agencies, and other entities or associations.

"Business days" means days of the week excluding Saturdays, Sundays, and official state holidays.

"Business office" means an office or service center provided and maintained by a company.

"Business service" means service other than residential service.

"Busy season" means an annual, recurring, and reasonably predictable three-month period of the year when a switch or trunk carries the most traffic. This definition is applied on an individual switch and an individual trunk basis.

"Call aggregator" means any corporation, company, partnership, or person, who, in the ordinary course of its operations, makes telephones available to the public or to users of its premises for telephone calls using a provider of operator services, including, but not limited to, hotels, motels, hospitals, campuses, and pay phones (see also pay phone service providers).

"Call detail" has the meaning found in WAC 480-120-201.

"Category of service" means local, data services such as digital subscriber line service, interexchange, or CMRS. Information about a customer's intralATA and interLATA primary interexchange carrier freeze status is part of the local category.

"Central office" means a company facility that houses the switching and trunking equipment serving a defined area.

"Centrex" means a telecommunications service providing a customer with direct inward dialing to telephone extensions and direct outward dialing from them.

"Class A company" means a local exchange company with two percent or more of the access lines within the state of Washington.

"Class B company" means a local exchange company with less than two percent of the access lines within the state of Washington.

"Commercial mobile radio service (CMRS)" means any mobile (wireless) telecommunications service that is provided for profit that makes interconnected service available to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public.

"Commission (agency)" in a context meaning a state agency, means the Washington utilities and transportation commission.

"Company" means any telecommunications company as defined in RCW 80.04.010.

"Competitively classified company" means a company that is classified as competitive by the commission pursuant to RCW 80.36.320.

"Customer" means a person to whom the company is currently providing service.

"Customer premises equipment (CPE)" is equipment located on the customer side of the SNI (other than a carrier) and used to originate, route, or terminate telecommunications.

"Customer proprietary network information (CPNI)" has the meaning found in WAC 480-120-201.

"Discontinue; discontinuation; discontinued" means the termination of service to a customer.

"Drop facilities" means company-supplied wire and equipment placed between a premises and the company distribution plant at the applicant's property line.

"Due date" means the date an action is required to be completed by rule or, when permitted, the date chosen by a company and provided to a customer as the date to complete an action.

"Emergency response facility" means fire stations, hospitals, police stations, and state and municipal government emergency operations centers.

"Exchange" means a geographic area established by a company for telecommunications service within that area.

"Extended area service (EAS)" means telephone service extending beyond a customer's exchange, for which the customer may pay an additional flat-rate amount per month.

"Facility or facilities" means lines, conduits, ducts, poles, wires, cables, cross-arms, receivers, transmitters, instruments, machines, appliances, instrumentalities and all devices, real estate, easements, apparatus, property and routes used, operated, owned or controlled by a telecommunications company to facilitate the provision of telecommunications service.

"Force majeure" means natural disasters, including fire, flood, earthquake, windstorm, avalanche, mudslide, and other similar events; acts of war or civil unrest when an emergency has been declared by appropriate governmental officials; acts of civil or military authority; embargoes; epidemics; terrorist acts; riots; insurrections; explosions; and nuclear accidents.

"Interexchange" means telephone calls, traffic, facilities or other items that originate in one exchange and terminate in another.

"Interexchange company" means a company, or division thereof, that provides long distance (toll) service.

"Interoffice facilities" means facilities connecting two or more telephone switching centers.

"InterLATA" is a term used to describe services, revenues, functions, etc.,

that relate to telecommunications originating in one LATA and terminating outside of the originating LATA.

"IntraLATA" is a term used to describe services, revenues, functions, etc., that relate to telecommunications that originate and terminate within the same LATA.

"Local access and transport area (LATA)" means a local access transport area as defined by the commission in conformance with applicable federal law.

"Local calling area" means one or more rate centers within which a customer can place calls without incurring long-distance (toll) charges.

"Local exchange company (LEC)" means a company providing local exchange telecommunications service.

"Major outages" means a service failure lasting for thirty or more minutes that causes the disruption of local exchange or toll services to more than one thousand subscribers; total loss of service to a public safety answering point or emergency response agency; intercompany trunks or toll trunks not meeting service requirements for four hours or more and affecting service; or an intermodal link blockage (no dial tone) in excess of five percent for more than one hour in any switch or remote switch.

"Missed commitment" means orders for exchange access lines for which the company does not provide service by the due date.

"Order date" means the date when an applicant requests service unless a company identifies specific actions a customer must first take in order to be in compliance with tariffs, price lists, or commission rules. Except as provided in WAC 480-120-061 and 480-120-104, 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.

When an applicant requests service that requires customer-ordered special equipment, for purposes of calculating compliance with the one hundred eighty-day requirement of WAC 480-120-112 (Company performance for orders for nonbasic service) the order date is the application date unless the applicant fails to provide the support structure or perform other requirements of the tariff or price list. In the event the applicant fails to provide the support structure or perform the other requirements of the tariff or price list, a new order date is established as the date when the applicant does provide the support structure or perform the other requirements of the tariff or price list.

"Pay phone" or "pay telephone" means any telephone made available to the public on a fee-per-call basis independent of any other commercial transaction. A pay phone or pay telephone includes telephones that are coin-operated or are activated by calling collect or using a calling card.

"Pay phone services" means provision of pay phone equipment to the public for placement of local exchange, interexchange, or operator service calls.

"Pay phone service provider (PSP)" means any corporation, company,

partnership, or person who owns or operates and makes pay phones available to the public.

"Payment agency" means a physical location established by a local exchange company, either on its own premises or through a subcontractor, for the purpose of receiving cash and urgent payments from customers.

"Person" means an individual, or an organization such as a firm, partnership, corporation, municipal corporation, agency, association or other entity.

"Prior obligation" means an amount owed to a local exchange company or an interexchange company for regulated services at the time the company physically toll-restricts, interrupts, or discontinues service for nonpayment.

"Private account information" means customer proprietary network information that is associated with an identifiable individual.

"Proprietary" means owned by a particular person.

"Provision" means supplying telecommunications service to a customer.

"Public access line (PAL)" means an access line equipped with features to detect coins, permit the use of calling cards, and such other features as may be used to provision a pay phone.

"Public safety answering point (PSAP)" means an answering location for enhanced 911 (E911) calls originating in a given area. PSAPs are designated as primary or secondary. Primary PSAPs receive E911 calls directly from the public; secondary PSAPs receive E911 calls only on a transfer or relay basis from the primary PSAP. Secondary PSAPs generally serve as centralized answering locations for a particular type of emergency call.

"Residential service" means basic service to a household.

"Restricted basic service" means either the ability to receive incoming calls, make outgoing calls, or both through voice grade access to the public switched network, including E911 access, but not including other services that are a part of basic service.

"Results of operations" means a fiscal year financial statement concerning regulated operations that include revenues, expenses, taxes, net operating income, and rate base. The rate of return is also included as part of the results of operations. The rate of return is the percentage of net operating income to the rate base.

"Service interruption" means a loss of or impairment of service that is not due to, and is not, a major outage.

"Service provider" means any business that offers a product or service to a customer, the charge for which appears on the customer's telephone bill.

"Special circuit" means an access line specially conditioned to give it characteristics suitable for handling special or unique services.

"Standard network interface (SNI)" means the protector that generally marks the point of interconnection between company communications facilities and customer's terminal equipment, protective apparatus, or wiring at a customer's premises. The network interface or demarcation point is located on the customer's side of the company's protector, or the equivalent thereof in cases where a protector is not employed.

"Station" means a telephone instrument installed for the use of a subscriber to provide toll and exchange service.

"Subscriber list information (SLI)" means any information:

(a) Identifying the listed names of subscribers of a company and those subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned when service is established), or any combination of listed names, numbers, addresses, or classifications; and

(b) That the company or an affiliate has published, caused to be published, or accepted for publication in any directory format.

"Support structure" means the trench, pole, or conduit used to provide a path for placement of drop facilities.

"Telecommunications-related products and services" means:

(a) The offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used; or

(b) Services offered over common carrier transmission facilities which employ computer processing applications that act on the format, content, code, protocol, or similar aspects of the subscriber's transmitted information, provide the subscriber additional, different, or restructured information, or involve subscriber interaction with stored information; or

(c) Equipment employed on the premises of a person to originate, route, or terminate telecommunications.

"Telecommunications service" means the offering of telecommunications for a fee directly to the public, or to such classes of users to be effectively available directly to the public, regardless of the facilities used.

"Telemarketing" means contacting a person by telephone in an attempt to sell one or more products or services.

"Toll restriction" or "toll restricted" means a service that prevents the use of a local access line to initiate a long distance call using a presubscribed interexchange company.

"Traffic" means telecommunications activity on a telecommunications network, normally used in connection with measurements of capacity of various parts of the network.

"Trouble report" means a report of service affecting network problems reported by customers, and does not include problems on the customer's side of the SNI.

"Trunk" means, in a telecommunications network, a path connecting two switching systems used to establish end-to-end connection. In some circumstances, both of its terminations may be in the same switching system.

[Statutory Authority: RCW 80.01.040 and 80.04.160. 03-01-065 (Docket No. UT-990146, General Order No. R-507), § 480-120-021, filed 12/12/02, effective 7/1/03. Statutory Authority: RCW 80.04.160, 80.36.520 and 80.01.040. 99-02-020 (Order R-452, Docket No. UT-970301), § 480-120-021, filed 12/29/98, effective 1/29/99. Statutory Authority: RCW 80.01.040. 93-06-055 (Order R-384, Docket No. UT-921192), § 480-120-021, filed 2/26/93, effective 3/29/93. Statutory Authority: RCW 80.01.040 and chapter 80.36 RCW. 91-13-078 (Order R-345, Docket No. UT-900726), § 480-120-021, filed 6/18/91, effective 7/19/91. Statutory Authority: RCW 80.01.040 and 1988 c 91. 89-04-044 (Order R-293, Docket No. U-88-1882-R), § 480-120-021, filed 1/31/89. Statutory Authority: RCW 80.01.040. 86-11-009 (Order R-250, Cause No. U-85-58), § 480-120-021, filed 5/12/86, effective 7/31/86. Statutory Authority: RCW 80.01.040 and 1985 c 450. 85-23-001 (Order R-242, Cause No. U-85-56), § 480-120-021, filed 11/7/85. Statutory Authority: RCW 80.04.060. 79-10-060 (Order R-131, Cause No. U-79-42), § 480-120-021, filed 9/18/79. Statutory Authority: RCW 80.36.140. 79-03-031 (Order R-123, Cause No. U-79-01), § 480-120-021, filed 2/28/79; Order R-25, § 480-120-021, filed 5/5/71. Formerly WAC 480-120-030.]

EXHIBIT B

UT-990146

Chapter 480-120

Telecommunications Operations

Pre-Proposal Draft

February 14, 2002

This document is provided to stakeholders so that they may respond to the Small Business Economic Impact Statement (SBEIS) questionnaire at <<http://www.wutc.wa.gov/990146/SBEIS>> and so that stakeholders may prepare oral comments on draft rules that will be taken at the Open Meeting of the Commission on March 27, 2002 (See notice for details).

This document contains rules concerning customer private account information (WAC 480-120-202 through 480-120-217). These rules were prepared after two public meetings, an opportunity to file written comments, and an Open Meeting discussion dedicated to this topic.

NOTE:

Most other rules that are included in this document will be repealed and replaced by the sections that appear in this document. For example, WAC 480-120-106 (Form of bills) will be repealed when WAC 480-120-161 (Form of bills) is adopted.

A cross-reference chart of current WAC numbers and WAC numbers to be adopted follows.

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Amend

480-120-021 Definitions. No change from prior draft
The definitions in this section apply throughout the chapter except where there is an alternative definition in a specific section, or where the context clearly requires otherwise.

“Class A company” means a local exchange company with two percent or more of the access lines within the state of Washington.

“Class B company” means a local exchange company with less than two percent of the access line within the state of Washington.

(No change to 480-120-029)

480-120-301 Accounting requirements for competitively classified companies.

Amend 480-120-031

480-120-302 Accounting requirements for companies not competitively classified as competitive.

(1)(a) Companies with two percent or more of state access lines and companies with less than two percent of state access lines are classified as follows:

Class	Number of Access Lines as of December 31 from prior year’s annual report
A access	2% or more of state lines
B access	Less that 2% of state lines

For example:

Company X access lines as of 12/31/98	33,823
Divided by	_____
Total state access lines as of 12/31/98	3,382,320
Equals company access lines as a percentage of total access lines.	1%

Therefore, company X is a Class B company.

(b) As long as a company can show it serves less than two percent of the total access lines listed in (a) of this subsection, it may compare future years to

47 the year listed in the example above, as a safe harbor option.

48 (c) If a company has more than two percent of the total access lines listed
49 in (a) of this subsection, but believes that it has less than two percent of a
50 subsequent year to that listed in the example above, it may use the more recent
51 "total state access lines" as of that subsequent year in order to calculate a
52 different threshold, as long as it provides all relevant information in a letter of
53 certification to the commission concurrent with its election. For purposes of this
54 rule the raw data may be requested from the commission's record center in order
55 for the company seeking the data to generate its own calculation subsequent,
56 and pursuant, to this rule.

57 (2)(a) For accounting purposes, companies not ~~competitively~~ classified as
58 competitive must use the *Uniform System of Accounts (USOA) for Class A and*
59 *Class B Telephone Companies* published by the Federal Communications
60 Commission (FCC) and designated as Title 47, Code of Federal Regulations,
61 Part 32, (47 CFR 32, or Part 32). The effective date for Part 32 is stated in WAC
62 480-120-999. Companies not ~~competitively~~ classified as competitive wishing to
63 adopt changes to the USOA made by the FCC ~~that have an annual revenue~~
64 ~~effect of more than one percent~~, after the date specified in WAC 480-120-999,
65 must petition for and receive commission approval. The petition must include the
66 effect of each change for each account and subaccount on an annual basis for
67 the most recent calendar year ending December 31. If the petition is complete
68 and accurate the commission may choose to grant such approval through its
69 consent agenda.

70 (b) Class B companies may use **Class A** accounting, but Class A
71 companies shall not be permitted to use Class B accounting.

72 (3) The commission modifies Part 32 as follows:

73 (a) Any reference in Part 32 to "Commission," "Federal Communications
74 Commission," or "Common Carrier Bureau" means the Washington Utilities and
75 Transportation Commission.

76 (b) Companies not ~~competitively~~ classified as competitive must keep
77 subsidiary records to reflect Washington intrastate differences when the
78 commission imposes accounting or ratemaking treatment different from the
79 accounting methods required in ~~WAC 480-80-034~~ subsection (2) of this section.
80 Companies not ~~competitively~~ classified as competitive must maintain subsidiary
81 accounting records for:

- 82 (i) Residential basic service revenues;
- 83 (ii) Business basic service revenues;
- 84 (iii) Access revenues for each universal service rate element;
- 85 (iv) Special access revenues; and
- 86 (v) Switched access revenues.

87 (c) Part 32 section 24, compensated absences, is supplemented as
88 follows:

89 (i) Companies not ~~competitively~~ classified as competitive must
90 record a liability and charge the appropriate expense accounts for sick leave in
91 the year in which the sick leave is used by employees.

92 (ii) Companies not ~~competitively~~ classified as competitive must

- 93 keep records for:
- 94 (A) Compensated absences that are actually paid; and
- 95 (B) Compensated absences that are deductible for federal
- 96 income tax purposes.
- 97 (d) Companies not ~~competitively~~ classified as competitive that have
- 98 multistate operations must keep accounting records that provide Washington
- 99 results of operations. The methods used to determine Washington results of
- 100 operations must be acceptable to the commission.
- 101 (e) Part 32 section 32.11(a) is replaced by subsection (1) of this section.
- 102 (f) Part 32 section 32.11(d) and (e) are replaced by subsection (1) of this
- 103 section.
- 104 (g) The commission does not require Part 32 section 32.2000(b)(4).
- 105 This rule does not supersede any accounting requirements specified in a
- 106 commission order, nor will it be construed to limit the commission's ability to
- 107 request additional information on a company specific basis. This rule does not
- 108 dictate intrastate ratemaking.
- 109 (h) Any reference in Part 32 to "Class A" or "Class B" means the
- 110 classification as set out in subsection (1) of this section.

111

112

113 **mend 480-120-031**

114 **480-120-302 Accounting requirements for companies not ~~competitively~~**

115 **classified as competitive.**

116

117

118 **mend 480-120-031**

119 **480-120-302 Accounting requirements for companies not ~~competitively~~**

120 **classified as competitive.**

121 (1) Annual reports for companies not ~~competitively~~ classified as competitive. The

122 commission will distribute an annual report form as specified in subsection (c)(i),

123 (ii), and (iii) of this subsection, and a regulatory fee form. A company not

124 ~~competitively~~ classified as competitive must:

- 125 (a) Complete both forms, file them with the commission, and pay its
- 126 regulatory fee, no later than May 1 of each year;
- 127 (b) Provide total number of access lines as required on the annual report
- 128 form; and
- 129 (c) Provide income statement and balance sheet for total company and
- 130 results of operations for Washington and Washington intrastate.
- 131 (i) **Class A** companies that the FCC classified as Tier 1
- 132 telecommunications companies in Docket No. 86-182 must file annual report
- 133 forms adopted by the FCC.
- 134 (ii) All other **Class A** companies must file annual reports on the
- 135 form prescribed by the commission.
- 136 (iii) Class B companies must file annual reports as prescribed by
- 137 RCW 80.04.530(2).
- 138 (2) Quarterly reports for companies not ~~competitively~~ classified as

- 139 competitive:
140 (a) All **Class A** companies must file results of operations quarterly.
141 (b) Each report will show monthly and twelve-months-ended data for each
142 month of the quarter reported.
143 (c) The reports are due ninety days after the close of the period being
144 reported, except for the fourth-quarter report which is due no later than May 1 of
145 the following year.
146 (3) Methods used to determine Washington intrastate results of operations
147 must be acceptable to the commission.
148 (4) This rule does not supersede any reporting requirements specified in a
149 commission rule or order, or limit the commission's authority to request additional
150 information.

151
152

153 **~~Amend 480-120-544 Introduces this section~~**
154 **~~480-120-305 Streamlined filing requirements for Class B~~**
155 **telecommunications company rate increases.**

- 156 (1) A **Class B** company, as defined in WAC 480-120-031302(1), may use the
157 streamlined treatment described in this section for seeking a general rate
158 increase, as an alternative to the requirements in WAC 480-09-330.
159 (2) **General information required.** A **Class B** company seeking
160 streamlined treatment for a proposed general rate increase must submit the
161 following information at the time of filing or prior to its first notice to customers,
162 whichever occurs first:
163 (a) A copy of its customer notice as specified in subsection (6) of this
164 section.
165 (b) A results-of-operations statement, on a commission basis,
166 demonstrating that the company is not presently exceeding a reasonable level of
167 earnings. If the company is exceeding a reasonable level of earnings, the
168 proposed increase must be reduced accordingly.
169 (c) All supporting documentation used to develop the results-of-operations
170 statement, including supporting documentation for all adjustments.
171 (d) The results-of-operations statement filed under this subsection must
172 include Washington intrastate results of operations. If a company cannot provide
173 Washington intrastate results of operations with reasonable accuracy, the
174 commission may consider the total Washington results of operations including
175 the interstate jurisdiction.
176 (3) **Adjustments provided for in the results of operations.**
177 (a) The results-of-operations statement must provide restating actual
178 adjustments and proforma adjustments in accordance with (b) of this subsection.
179 (b) Before the achieved return is calculated a company must adjust the
180 booked results of operations for restating actual and proforma adjustments,
181 including the following:
182 (i) Nonoperating items;
183 (ii) Extraordinary items;
184 (iii) Nonregulated operating items; and

- 185 (iv) All other items that materially distort the test period.
- 186 (4) **Rate of return.** The authorized overall rate-of-return (for purposes of
- 187 this section only) is eleven and twenty-five one-hundredths percent.
- 188 (5) **Rate design.** A **Class B** company filing pursuant to this section must
- 189 clearly describe the basis for allocating any revenue requirement change
- 190 proposed by customer class (e.g., residential, business, and interexchange).
- 191 (6) **Customer notice.** The company must notify customers consistent
- 192 with the manner outlined in WAC 480-120-194, and must include the following
- 193 information:
- 194 (a) The proposed increase expressed in (a) total dollars and average
- 195 percentage terms, and (b) the average monthly increases the customers in each
- 196 category or subcategory of service might reasonably expect;
- 197 (b) The name and mailing address of the commission and public counsel;
- 198 (c) A statement that customers may contact the commission or public
- 199 counsel with respect to the proposed rate change; and
- 200 (d) The date, time, and place of the public meeting, if known.
- 201 (7) **Public meeting(s).** The commission will ordinarily hold at least one
- 202 public meeting in the area affected by the rate increase within forty-five days after
- 203 the date of filing.
- 204 (8) **Final action.** The commission will ordinarily take final action on a filing
- 205 under this section within ninety days after the date of filing.
- 206 (9) The commission may decline to apply the procedures outlined in this
- 207 section if it has reason to believe that:
- 208 (a) The quality of the company's service is not consistent with its public
- 209 service obligations; or
- 210 (b) A more extensive review is required of the company's results of
- 211 operations or proposed rate design.
- 212 (10) Nothing in this rule will be construed to prevent any company, the
- 213 commission, any customer, or any other party from using any other procedures
- 214 that are otherwise permitted by law.

215
216

217 **Amend 480-120-541**

218 **480-120-311 Access charge and universal service reporting.**

219 **(1) Intrastate mechanism reporting.**

220 (a) Until legislation creating a new universal service fund is adopted and

221 effective and commission rules to implement the legislation are adopted and

222 effective, each **Class A telecommunications** company in the state of Washington

223 and the Washington Exchange Carrier Association, must provide annually:

224 (i) The actual demand units for the previous calendar year for each

225 switched access tariff rate element (or category of switched access tariff rate

226 elements, both originating and terminating) it has on file with the commission.

227 (ii) Primary toll carriers (PTCs) must file, in addition to (a) of this

228 subsection, the annual imputed demand units for the previous calendar year that

229 the company would have had to purchase from itself if it had been an unaffiliated

230 toll carrier using feature group D switched access service (including intraLATA

231 and interLATA, both originating and terminating demand units). For purposes of
232 this subsection, a PTC means a local exchange company offering interexchange
233 service(s) to retail customers using feature group C switched access service for
234 the origination and termination of any such service(s).

235 (b) The report containing the information required in (a) of this subsection
236 must be filed by July 1 of each year.

237 (c) Each company providing information required by this section must
238 include complete workpapers and sufficient data for the commission to review the
239 accuracy of the report.

240 (2) **Annual state certification requirements for interstate (federal)**
241 **mechanism.** Each eligible telecommunications carrier (ETC) in Washington
242 receiving federal high-cost universal service support funds must provide the
243 following to the commission not later than August 31 of each year:

244 (a) A certification that, during the calendar year preceding the year in
245 which certification is made, the ETC provided the supported services required by
246 47 U.S.C. § 214(e) and described in the commission order granting it ETC status;

247 (b) A certification that, during the calendar year preceding the year in
248 which certification is made, the ETC advertised the availability of supported
249 services and the charges for them as required by 47 U.S.C. § 214(e) and as
250 described in the commission order granting it ETC status;

251 (c) A certification that funds received by it from the federal high-cost
252 universal service support fund will be used only for the provision, maintenance,
253 and upgrading of the facilities and services for which the support is intended;

254 (d) The amount of all federal high-cost universal service fund support
255 received for the calendar year preceding the year in which the filing must be
256 made (this includes, but is not limited to, High Cost Loop Support or "HCL", Local
257 Switching Support or "LSS", Long Term Support or "LTS", Interstate Access
258 Support or "IAS", and Interstate Common Line Support or "ICLS");

259 (e) The ~~quarterly~~ loop counts on which federal high-cost universal service
260 support was based for support received during the calendar year preceding the
261 year in which the filing must be made.

262 (f) The certifications required in (a) through (e) of this subsection must be
263 made in the same manner as required by RCW 9A.72.085.

264

265

266 **480-120-401 Network performance standards. (replaces 480-120-515)**

267 (1) All companies must meet the applicable network performance standards set
268 forth in this section. The standards applied to each service quality measurement
269 are the minimum acceptable quality of service under normal operating conditions.
270 All performance standards apply to each central office individually and must be
271 measured at or below that level. The performance standards do not apply to
272 abnormal conditions, including, but not limited to work stoppage directly affecting
273 provision of service in the state of Washington, holidays, force majeure, or major
274 outages caused by persons or entities other than the local exchange company
275 (LEC) or its agents.

276 (2) **Switches.** End-office switches, in conjunction with remote switches

277 where deployed, must meet the following standards:

278 (a) **Dial service.** For each switch, companies must ~~provide adequate~~
279 ~~equipment to~~ meet the following minimum standards during the switch's ~~normal~~
280 average busy-hour of the busy season:

281 (i) Dial tone must be provided within three seconds on at least
282 ninety-eight percent of calls placed; and

283 (ii) Ninety-eight percent of calls placed must not encounter an intra-
284 switch blocking condition within the central office, or blocking in host-remote, or
285 interoffice local trunks.

286 (b) **Intercept.** Central office dial equipment must provide adequate
287 access to an operator or to a recorded announcement intercept to all vacant
288 codes and numbers. Less than one percent of intercepted calls may encounter
289 busy or no-circuit-available conditions during the average busy-hour, of the busy-
290 season. ~~service levels.~~

291 (3) **Interoffice facilities.** Blocking performance during average busy-hour
292 for ninety-nine percent of trunk groups for any month must be less than one-half
293 of one percent for intertoll and intertandem facilities and less than one percent for
294 local and EAS interoffice trunk facilities. The blocking standard for E911
295 dedicated interoffice trunk facilities must be less than one percent during average
296 busy-hour ~~for any week~~ of the busy season. Two consecutive months is the
297 maximum that a single trunk group may be below the applicable standard.

298 (4) **Outside plant.**

299 (a) **Local loops.** Each LEC must design, construct, and maintain
300 subscriber loops to the standard network interface or demarcation point as
301 follows:

302 (i) For voice grade, local exchange service loops must meet all
303 performance characteristics specified in Section 4 of the Institute of Electrical and
304 Electronic Engineers (IEEE) Standard Telephone Loop Performance
305 Characteristics. Information about this standard regarding the version adopted
306 and where to obtain it is set forth in WAC 480-120-999.

307 (ii) For voice grade service, the circuit noise level on customer
308 loops measured at the customer network interface must be equal to or less than
309 20.0 dBrnC, except that digitized loops and loops in excess of 18,000 feet must
310 have a noise levels objective of less than 25.0 dBrnC, and ~~digitized loops using~~
311 ~~customer loop carrier systems must have noise levels less than~~ must not exceed
312 30 dBrnC.

313 (b) **Special circuits.** Off-premise station circuit loss must not exceed 5.0
314 dB at 1004 Hz when measured between the customer switch demarcation and
315 the customer station demarcation. LECs with over fifty thousand access lines
316 must maintain design criteria for special circuits. Companies must make channel
317 performance criteria available to customers upon request.

318 (c) **Digital services.** LECs must meet the availability objectives for digital
319 private line circuit performance specified in the American National Standards for
320 Telecommunications, "Network Performance Parameters for Dedicated Digital
321 Services - Specifications." Information about this standard regarding the version
322 adopted and where to obtain it is set forth in WAC 480-120-999. Upon request of

323 a customer, a LEC may provide to that customer digital services that do not meet
324 the performance standards set forth in subsection (4)(b) of this section.

325 (5) **Service to interexchange carriers.** LECs must provide service to
326 interexchange carriers at the grade of service ordered by the interexchange
327 carrier. At a minimum, each interexchange carrier must order sufficient facilities
328 from each LEC such that no more than two percent of all calls are blocked at the
329 LEC's switch.

330 (6) Companies must ~~measure-monitor~~ the network performance activity on
331 of the equipment they own, operate, or share at ~~sufficient~~ frequent intervals so
332 that adequate facilities can be designed, engineered and ~~are in~~ placed in service
333 when needed to meet the standards of this section ~~accommodate growth in~~
334 traffic.

335 (7) Each **Class A** LEC must arrange and design incoming trunks to the
336 primary repair service center so that traffic overflows during service interruptions
337 can be redirected or forwarded to an alternate repair or maintenance service
338 center location.

339
340 **Amend 480-120-535 Changes reference number and introduces Class A**
341 **and B language**

342 **480-120-439 Service quality performance reports.**

343 (1) ~~Local exchange companies with two percent or more of the access lines in~~
344 ~~the state of Washington~~ **Class A companies** must report monthly the information
345 required in subsections (3), (4), and (6) through (10) of this section. Companies
346 must report within thirty days after the end of the month in which the activity
347 reported on takes place (e.g., a report concerning missed appointments in
348 December must be reported by January 30).

349 (2) ~~Companies that are exempted from financial reporting requirements by~~
350 ~~RCW 80.04.530~~ **Class B companies** need not report to the commission as
351 required by subsection (1) of this section. However, these companies must
352 retain, for at least three years from the date they are created, all records that
353 would be relevant, in the event of a complaint or investigation, to a determination
354 of the company's compliance with the service quality standards established by
355 WAC 480-120-XXX107, 480-120-X08108, 480-120-XXY112¹, 480-120-510132,
356 480-120-515401, 480-120-525411, and 480-120-X16440².

357 (3) **Missed appointment report.** The report must include the number of
358 appointments missed for which missed appointment credits were required by
359 WAC 480-120-X08108.

360 (4) **Held orders for installation or activation of basic service report.**
361 The report must state the total number of orders taken, by central office, in each
362 month for all orders of up to the initial five access lines as required by WAC 480-
363 120-XXX107. The report must include orders with due dates later than five days
364 as requested by a customer. The held order report must state, by central office,
365 of the total orders taken for the month, the number of orders that the company

¹ The drafts of WAC's 480-120-107, 108, and 112 specifically exclude competitive companies.
See attachment A

² The rule language contained in these sections refer generally to "companies" or LEC

366 was unable to complete within five business days after the order date or by a
367 later date as requested by the customer.

368 (a) A separate report must be filed each calendar quarter that states the
369 total number of orders taken, by central office, in that quarter for all orders of up
370 to the initial five access lines as required by WAC 480-120-XXX107. The held
371 order ninety-day report must state, of the total orders taken for the quarter, the
372 number of orders that the company was unable to complete within ninety days
373 after the order date.

374 (b) A separate report must be filed each six months that states the total
375 number of orders taken, by central office, in the last six months for all orders of
376 up to the initial five access lines as required by WAC 480-120-XXX107. The held
377 order one hundred and eighty day report must state, of the total orders taken for
378 six months, the number of orders that the company was unable to complete
379 within one hundred and eighty days.

380 Orders for which customer-provided special equipment is necessary;
381 when a later installation or activation is permitted under WAC 480-120-074145;
382 or when the commission has granted an exemption under WAC 480-120-015
383 from the requirement for installation or activation of a particular order may be
384 excluded from the total number of orders taken and from the total number of
385 uncompleted orders for the month.

386 **(5) Major outages report.** Notwithstanding subsections (1) and (2) of
387 this section, any company experiencing a major outage that lasts more than
388 forty-eight hours must provide a major outage report to the commission within ten
389 business days of the major outage. The major outages report must include a
390 description of each major outage and a statement that includes the time, the
391 cause, the location and number of affected access lines, and the duration of the
392 interruption or impairment. When applicable, the report must include a
393 description of preventive actions to be taken to avoid future outages. This
394 reporting requirement does not include company-initiated major outages that are
395 in accordance with the contract provisions between the company and its
396 customers or other planned interruptions that are part of the normal operational
397 and maintenance requirements of the company.

398 The commission staff may request oral reports from companies
399 concerning major outages at any time and companies must provide the
400 requested information.

401 **(6) Summary trouble reports.** Each month companies must submit a
402 report reflecting ~~Any company experiencing trouble reports in excess of the~~
403 standard established in WAC 480-120-X14438³. The report ~~;~~ must include report
404 summaries of trouble reports that include the number of reports by central office
405 and the number of lines served by the central office. ~~exchange of impairment or~~
406 ~~loss of service, and .~~ In addition, the report must include an explanation of causes
407 for each central office that exceeds the service quality standard established in
408 WAC 480-120-X14438. The reports, including repeated reports, must be
409 presented as a ratio per one hundred lines in service. The reports caused by

³ AT&T on behalf of broadband had commented that we did not keep information on C.O. basis, another reason one could have interpreted the rule as applying to ILEC's only.

410 customer-provided equipment or inside wiring should not be included in this
411 report.

412 (7) **Switching report.** Any company experiencing switching problems in
413 excess of the standard established in WAC 480-120-515401(2)(a), must report
414 the problems to the commission. The report must identify the location of every
415 switch that is performing below the standard.

416 (8) **Interoffice, intercompany and interexchange trunk blocking**
417 **report.** Companies that experience trunk blocking in excess of the standard in
418 WAC 480-120-515401(3) must report each trunk group that does not meet the
419 performance standards. For each trunk group not meeting the performance
420 standards, the report must include the peak percent blocking level experienced
421 during the preceding month, the number of trunks in the trunk group, and the
422 busy hour when peak blockage occurs. The report must include an explanation
423 of steps being taken to relieve blockage on any trunk groups that do not meet the
424 standard for two consecutive months.

425 (9) **Repair report.** (a) For service-interruptions repairs subject to the
426 requirements of WAC 480-120-X16440, companies must report the number of
427 service interruptions reported each month, the number repaired within ~~twenty-~~
428 four forty-eight hours, and the number repaired more than forty-eight hours after
429 the initial report. In addition, a company must indicate the number of
430 construction orders requiring permits as provided for in 480-120-X16440.

431 (b) For service-impairment repairs subject to the requirements of WAC
432 480-120-X16440, companies must report the number of service impairments
433 reported each month, the number repaired within seventy-two hours, and the
434 number repaired more than seventy-two hours after the initial report. In addition,
435 a company must state the number of construction orders requiring permits as
436 provided for in WAC 480-120-X16440.

437 (10) **Business office and repair answering system reports.** When
438 requested, companies must report compliance with the standard required in
439 WAC 480-120-X12133. If requested, companies must provide the same reports
440 to the commission that company managers receive concerning average speed of
441 answer, transfers to live representatives, station busies, and unanswered calls.

442 (11) The commission may choose to investigate matters to protect the
443 public interest, and may request further information from companies that details
444 geographic area and type of service, and such other information as the
445 commission requests.

446

EXHIBIT C

February 14, 2002

**NOTICE OF PROPOSED RULEMAKING (CR-102)
AND ORAL COMMENT OPPORTUNITY
(March 27, 2002, at 1:30 p.m.)**

**FINAL REQUEST FOR SBEIS INFORMATION
(Now through March 7, 2002)**

RE: Telecommunications - Operations, Chapter 480-120 WAC
Docket No. UT-990146

TO ALL INTERESTED PERSONS:

The Commission Staff has completed a draft of the proposed rules for chapter 480-120 WAC, Telecommunications – Operations. Please note that the rules include rules on the use of private information. Commission Staff plans to present the CR-102 Proposed Rulemaking to the Commission at a special open meeting, **March 27, 2002, at 1:30 p.m.** Interested persons may comment on the proposed rules at the special open meeting. The proposed draft rules are available for inspection on the Commission's web site at www.wutc.wa.gov/990146. If you are unable to access the Commission's web page and would like a copy of the proposed draft rules, please contact the records center at (360) 664-1234.

The special open meeting will be held in Room 206 at the Commission's headquarters in Olympia, Washington. The Commission's address is:

Washington Utilities & Transportation Commission
1300 South Evergreen Park Drive SW
P.O. Box 47250
Olympia Washington 98504-7250

SBEIS Survey

The Commission offers a final opportunity to respond to a survey that will assist the Commission in its preparation of a small business economic impact statement (SBEIS) based on the most recent set of draft rules. In order to allow Commission Staff sufficient time to produce the SBEIS, we request that you submit SBEIS survey responses **no later than Thursday, March 7, 2002**. Because of the time needed to prepare an analysis of

the information received, responses to the questionnaire received after March 7, 2002, will not be reflected in the SBEIS.

The Commission has prepared an interactive survey concerning the economic effects these draft proposed rules may have on small businesses. The survey may be viewed and responded to on the internet at <http://www.wutc.wa.gov/990146/SBEIS>. Assumptions should be based on the complete set of proposed draft rules posted concurrently with this Notice at <http://www.wutc.wa.gov/990146>. If you do not wish to respond electronically, you may contact the Commission and ask for a paper copy of the survey and one will be provided to you. Please call Records Center at (360) 664-1234 if you need a paper copy.

All interested persons are requested to respond to the survey, including businesses that do not meet the statutory definition of a small business (fifty or fewer employees). The Commission considers the potential cost of its rules for all affected businesses in its analysis of rules. Interested persons who are not businesses may also comment on the potential economic impact a section may have on customers.

Responses to the SBEIS survey will be received on a section-by-section basis. Please respond to all rules that you believe will have an economic impact upon your business or upon customers.

You may respond to the SBEIS survey **beginning now through March 7, 2002**. After March 7, 2002, the internet link to the questionnaire will be closed. Paper responses, if any, should also be filed with the Commission **no later than March 7, 2002**.

If you need additional information regarding the draft proposed rules, please call Bob Shirley at (360) 664-1292 or e-mail him at bshirley@wutc.wa.gov. If you need additional information regarding the SBEIS survey, please call Tim Zawislak at (360) 664-1294 or e-mail him at tim@wutc.wa.gov.

Sincerely,

CAROLE J. WASHBURN
Secretary

ORIGINAL

BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of,

COMCAST PHONE OF WASHINGTON, LLC

No. UT-031459/UT-031626
CERTIFICATE OF SERVICE

I certify that on the date given below, the original and 13 copies of the **Motion for Summary Determination That WAC 480-120-439 Does Not Apply to Comcast Phone of Washington, LLC and That Commission Penalty Be Completely Mitigated** in the above-referenced docket were delivered via of legal messenger:

Ms. Carole Washburn, Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 South Evergreen Park Dr. S.W.
Olympia, WA 98504-7250
E-mail: records@wutc.wa.gov

On the same date, a true and correct copy of each of the above-mentioned documents was sent by regular U.S. Mail and e-mail to: