

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In Re:) Telecommunications – Chapter 480-120 WAC,
Telecommunications) Chapter 480-122 and Chapter 480-80 WAC,
Rulemaking) relating to telecommunications
)
) Docket No. UT-040015

COMMENTS OF COMCAST PHONE OF WASHINGTON, LLC

Comcast Phone of Washington, LLC (“Comcast Phone” or the “Company”) hereby submits its comments in the above-captioned docket relating to the proposed Telecommunication-Related Rules in Chapter 480-120 WAC and Chapter 480-80 WAC (“Proposed Telco-Related Rules”), pursuant to the Washington Utilities and Transportation Commission’s (the “Commission’s” or the “WUTC’s”) Notice of Opportunity to File Written Comments Dated June 30, 2004. Comcast Phone wishes to thank the Commission for this opportunity to comment on its changes to the rules. In order to address the Proposed Telco-Related Rules most clearly and efficiently, our comments are broken into two parts: Section I – a rule-by-rule analysis of certain of the Proposed Telco-Related Rules; and Section II -- a separate and subsequent analysis of the Commission’s proposed Customer Privacy Draft Rules. Additionally, Comcast Phone offers proposed alternative language, where appropriate.¹

¹ Comcast Phone has not included in its comments below those Proposed Telco-Related Rules with respect to which it does not currently have a position.

I. **RULE-BY-RULE ANALYSIS OF CHANGES TO THE TELCO-RELATED RULES**

WAC 480-120-021 Definitions

Comcast Phone proposes that the definition of “Basic Service” found in WAC 480-120-021 be limited to one access line per customer. The term “basic service” is found in numerous WUTC rules that have a significant impact on the way in which service providers conduct their businesses in the State of Washington. Most notably, a LEC, in reviewing an application for service may, pursuant to WAC 480-120-122(2), require a deposit for basic service only if the applicant has received two or more delinquency notices for basic service during the last twelve month period, if the applicant has had basic service discontinued, or if the applicant has an unpaid balance for basic service. WAC 480-120-122(2) would require a LEC to install multiple access lines for a customer lacking a reasonable credit or payment history, if the definition of “Basic Service” were to continue to include more than just one access line per customer.

Accordingly, Comcast Phone proposes that each access line above a customer’s initial access line be considered ancillary (and not basic) service. Under WAC 480-120-122(2), a company may require an applicant of ancillary services to demonstrate satisfactory credit by reasonable means or to pay a deposit. The Commission, were it to define each access line above a customer’s initial access line as ancillary, would not undermine a customer’s ability to obtain lifeline service with respect to the customer’s initial access line.

WAC 480-120-026 Classification of local exchange companies as Class A or Class B

The current draft of WAC 480-120-026(4) is problematic because it would require a LEC to notify the Commission Secretary immediately of a change in classification from a “Class A” to a “Class B,” namely, when the change is due to an increase in the number of access lines served above a 2% threshold. Due to churn, a LEC that is close to the 2% threshold could end up having to notify the Commission Secretary constantly that a change has occurred in its Class A or Class B status.

Therefore, Comcast Phone proposes that the current draft of WAC 480-120-026(4) be amended as follows:

“(4) Any company whose classification as Class A or Class B changes, due to a change in the number access lines served, a change in affiliate relationships, or other reason, must ~~promptly~~ notify the commission secretary of the change in classification within thirty days after the end of the month in which change in classification occurs.”

WAC 480-120-122 Establishing credit -- Residential services

Comcast Phone proposes that subsection WAC 480-120-122(2) of this rule be modified as follows:

“A LEC may, if provided for in its tariff or price list, require an applicant or customer of ancillary services to demonstrate satisfactory credit by reasonable means or pay a deposit or make advanced payments consistent with subsections (4) and (5) of this section.”

This change above would simply clarify that a service provider, in lieu of a deposit, may request advanced payments for ancillary services, thus reasonably limiting the losses a company suffers as a result of non-payment.

WAC 480-120-164 Prorata Credits

WAC 480-120-164 would require a company to track outages of any duration, to add them up over the course of a month, and to issue a customer a credit if the customer's outages exceed twenty-four hours in a one-month period. As Staff has noted in the italicized text accompanying the draft rule, WAC 480-120-164 is not intended to require a service provider to implement systems to detect each and every outage, but rather it is intended to provide a credit when a service provider detects an outage in its normal course of business. Consistent with Staff's advice, Comcast Phone proposes that the rule state *explicitly* that a service provider is not required to implement systems which are capable of detecting all outages (e.g., an outage of milliseconds or similar duration or an outage affecting only a localized single customer) or to otherwise detect outages outside the normal course of business.

Furthermore, the language of WAC 480-120-164 should be refined to specify what is meant by the term "not available." Specifically, is this rule referring to the unavailability of service due to a failure of the service provider to install the service? Or, is the rule referring to the unavailability of service due to a "Service Interruption" and/or a "Major Outage," as defined in WAC 480-120-021.

WAC 480-120-439 Service quality performance reports

Comcast Phone, before delving into specific comments on WAC 480-120-439, suggests that this rule needs to be examined in various ways. First, because the WUTC has ruled in consolidated Docket No UT-031459 and UT-031626 that all companies fall under either a "Class A" or "Class B" classification, this rule should be amended to

reflect the fact that not all companies have network infrastructure that mirrors the ILEC's. Second, WAC 480-120-439, and any rule related to it, must take into account the fact that CLECs have been exempted from some standards applicable to ILECs, and those exemptions should carry over to WAC 480-120-439. For example, the WUTC has exempted CLECs from provisions of WAC 480-120-105 (1) (a) and (b). The exemption of CLECs from WAC 480-120-105 (1) (a) and (b) was necessary because it often takes an ILEC an extended period to port out telephone numbers to a CLEC (e.g., four business days minimally, in some cases).

With respect to WAC 480-120-439 (3) (the missed appointment report), the current rule requires that service providers state the number of appointments missed, the total number of appointments made, and the number of appointments excluded because of a company-initiated change or a customer-initiated change in appointment or because of force majeure, work stoppages, or other events beyond the company's control. Because service providers such as Comcast Phone and its affiliates provide multiple services to their customers, the company's systems include, on a combined basis, appointment information for all lines of business – and not merely for the telephony line-of-business. That is to say, service providers such as Comcast Phone may not have the proper tracking mechanisms in place to provide reports based solely on telephony appointments. Providing the missed appointment report solely for a service provider's telephony business would be require significant portioning of systems and data, which, in turn, would create inefficiencies and potential costs.

In Docket No. UT-031626, Comcast Phone requested an alternative to the report required under WAC 480-120-439 (3) by committing to offer its "On Time Guarantee"

program to customers who qualify because of a missed appointment. Comcast Phone believes that WAC 480-120-439 (3) should be amended to allow all companies a similar alternative without requiring the filing of a petition for waiver. Specifically, Comcast Phone recommends that WAC 480-120-439 (3) of the rule be amended to read as follows:

“(e) In lieu of the missed appointment report, a LEC may file in its price list or tariff a missed appointment reimbursement payment or credit of not less than \$15 per customer per missed appointment. The reimbursement payment or credit will be payable or credited to the customer if a specified appointment window is missed due to the fault of the LEC and not the fault of the customer or force majeure.”

The language above would provide service providers the discretion to offer an inconvenienced customer credits or other types of service offers specific to that particular situation and customer’s need, or in the alternative, to report on the missed appointments on a monthly basis.

WAC 480-120-439 (4) (installation or activation of basic service report) is problematic for several reasons. First, as stated above, the related rule, WAC 480-120-105 properly exempts CLECs from some of the requirements (e.g., five-day installation interval and ninety-day installation interval); however, WAC 480-120-439 does not reflect those exemptions. Second, the basis for measurement in this report is “by central office.” The network infrastructure used by providers such as Comcast Phone does not include “central offices,” as defined by the rules. Service providers such as Comcast Phone are able report by “rate center,” but not by “central office,” and we therefore propose that service providers have the right to report by “central office or by rate center,” as opposed to by just “rate center.”

Specifically, Comcast Phone requests that WAC 480-120-439 (4) of the rule be amended to:

“(4) Installation or activation of basic service report. The report must state the total number of orders taken, by central office or by rate center, in each month for all orders of up to the initial five access lines as required by WAC [480-120-105](#). The report must include orders with due dates later than five days as requested by a customer. The installation or activation of basic service report must state, by central office, of the total orders taken for the month, the number of orders that the company was unable to complete within five business days after the order date or by a later date as requested by the customer. Unless the commission orders otherwise, this subsection does not apply to LECs that are competitively classified under RCW [80.36.320](#) and do not offer local exchange service by tariff.

(a) A separate report must be filed each calendar quarter that states the total number of orders taken, by central office or by rate center, in that quarter for all orders of up to the initial five access lines as required by WAC [480-120-105](#). The installation or activation of basic service ninety-day report must state, of the total orders taken for the quarter, the number of orders that the company was unable to complete within ninety days after the order date. Unless the commission orders otherwise, this subsection does not apply to LECs that are competitively classified under RCW [80.36.320](#) and do not offer local exchange service by tariff.

(b) A separate report must be filed each six months that states the total number of orders taken, by central office or by rate center, in the last six months for all orders of up to the initial five access lines as required by WAC [480-120-105](#). The installation or activation of basic service one hundred eighty day report must state, of the total orders taken for six months, the number of orders that the company was unable to complete within one hundred eighty days.”

Similarly, WAC 480-120-439 (6) (summary trouble report) requires reporting by “central office.” For the reasons set forth above with respect to the requested changes to WAC 480-120-439 (4), Comcast Phone requests that WAC 480-120-439 (6) likewise be modified to read as follows:

“(6) Summary trouble reports. Each month companies must submit a report reflecting the standard established in WAC [480-120-438](#). The report must include the number of reports by central office or by rate center and the number of lines served by the central office or by rate center. In addition, the report must include an explanation of causes for

each central office or rate center that exceeds the service quality standard established in WAC [480-120-438](#). The reports, including repeated reports, must be presented as a ratio per one hundred lines in service. The reports caused by customer-provided equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company should not be included in this report.”

Likewise, WAC 480-120-438 trouble report standard, should be amended to:

“WAC 480-120-438 Trouble report standard. Trouble reports by central office or rate center must not exceed four trouble reports per one hundred access lines per month for two consecutive months, or per month for four months in any one twelve-month period. This standard does not apply to trouble reports related to customer premise equipment, inside wiring, force majeure, or outages of service caused by persons or entities other than the local exchange company.”

Finally, WAC 480-120-439 (7) (switching report) and WAC 480-120-439 (8) (interoffice, intercompany and interexchange trunk blocking report) are also troublesome. These reports require all companies, regardless of classification, to report problems in excess of the standards in WAC 480-120-401. Not all companies own or control their own switches or the transport and other trunking facilities off those switches. Because a company that owns or controls a switch is required to report under this subsection, it would be duplicative and unnecessary to require a company that leases switching and transport and other trunking facilities from a third party to file a duplicate report. In fact, a company which leases switching may not have access to the underlying documentation needed to file the required reports.

Therefore, Comcast Phone requests that WAC 480-120-439 (7) and (8) be amended to:

“(7) Switching report. Any company owning or controlling a switch experiencing switching problems in excess of the standard established in WAC [480-120-401](#) (2)(a), must report the problems to the commission. The report must identify the location of every switch that is performing below the standard.

(8) **Interoffice, intercompany and interexchange trunk blocking report.** Companies, which owns or controls a switch that experience trunk blocking in excess of the standard in WAC [480-120-401](#) (3) and (5) must report each trunk group that does not meet the performance standards. For each trunk group not meeting the performance standards, the report must include the peak percent blocking level experienced during the preceding month, the number of trunks in the trunk group, the busy hour when peak blockage occurs, and whether the problem concerns a standard in WAC [480-120-401](#) (3) or (5). The report must include an explanation of steps being taken to relieve blockage on any trunk groups that do not meet the standard for two consecutive months.”

WAC 480-122-020 Washington telephone assistance program rate

Comcast Phone supports the change eliminating the requirement that non-ETC companies with one hundred or more residential access line must offer WTAP service. We appreciate that Staff has recognized that for a number of business reasons many service providers have made the decision not to petition the WUTC for ETC status. The current rule, which requires all companies with more than one hundred access lines to provide WTAP, does not recognize that a non-ETC a company offering WTAP is not eligible to recover the full cost for the provision of service since the company is not able to draw on the federal fund. The proposed changes correctly place the burden of providing WTAP on those companies that have been granted ETC status by the WUTC.

II. THE CUSTOMER PRIVACY DRAFT RULES ARE UNNECESSARY

As the WUTC is aware, the Federal Communications Commission (“FCC”) issued comprehensive telephone customer privacy rules in its Third Report and Order concerning the use of customer proprietary network information (“CPNI”) and other customer information by telecommunications carriers.² In the *CPNI Third Report and*

² See *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers Use of Customer Proprietary Network Information and Other Customer Information*, Third Report and Order and

Order the FCC adopted sweeping rules governing a telecommunications carrier's use of CPNI and related information that comports with the Tenth Circuit's decision vacating³ previous CPNI rules.

Specifically, the FCC's *CPNI Third Report and Order* sets forth detailed and specific rules concerning the use and disclosure of CPNI by telecommunications carriers. First, the FCC determined that the use or disclosure of CPNI (to affiliated entities providing communications-related services) requires a customer's knowing consent in the form of notice and opt-out approval.⁴ Second, disclosure of CPNI to unrelated third parties or to carrier affiliates that do not provide communications-related services requires express customer consent, described as "opt-in" approval.⁵ Third, the FCC also refined the rules governing the process by which carriers provide notification to customers of their CPNI rights.⁶ Thus, current federal regulations, as embodied in the *CPNI Third Report and Order* and codified at 47 C.F.R. §§ 64.2000, *et. seq.*, impose extensive regulations on telecommunications carriers seeking to use and disclose CPNI and other customer information.

Despite this fact, the WUTC has proposed customer privacy rules that essentially mirror current federal rules. A review of the WUTC's proposed regulations, WAC 480-120-X01 through WAC 480-120-X05, reveal that the proposed rules are almost identical to current federal rules. The one exception is that the WUTC's proposed rules do not appear to apply to wireless carriers. Other than that, and the differing use of the terms

Further NPRM, FCC 02-214, 17 FCC Rcd 14860 (2002) (hereinafter "*CPNI Third Report and Order*" or "*Order*").

³ *U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999).

⁴ *Id.* at ¶¶ 31-44.

⁵ *Id.* at ¶¶ 45-68.

⁶ *Id.* at ¶¶ 89-97.

“telecommunications company” and “telecommunications carrier,” the proposed State rules duplicate existing federal rules.

As such, the proposed rules provide no additional consumer protections or apparent benefits. Instead, the rules simply add another layer of law and regulation on an industry that is already burdened with excessive regulation. Although the proposed rules would not necessarily be subject to preemption under the FCC’s current rules,⁷ the FCC recognized that a patchwork of obligations arising at the State level could impair carriers: “[w]e do not take lightly the potential impact that varying state regulations could have on carriers’ ability to operate on a multi-state or nationwide basis.”⁸

For that reason, the utility (and cost) of any additional State rules which do nothing other than mirror obligations that already arise under federal law must be considered. Given that the FCC has already promulgated the very same rules, and applied those rules nation-wide basis, there is little reason to implement the WUTC’s duplicative proposed rules.

In addition, the possibility exists that the WUTC’s proposed rules (if adopted) could later be amended or construed in a manner that could impose obligations beyond what is required under federal law. In such a situation carriers would be forced to bring preemption petitions at the FCC to the extent that the State rules were applied in a manner inconsistent with federal law. It is also important to recognize that the tension between CPNI rules and the First Amendment has already spawned significant litigation⁹

⁷ The FCC recognized that refusing to preempt state rules could increase the burden on carriers, and therefore stated its intent to review overly burdensome State rules on a case-by-case basis. *Id.* at ¶¶ 69-71.

⁸ *Id.* at ¶ 71.

⁹ *See, e.g., U.S. West, Inc. v. FCC*, 182 F.3d 1224 (10th Cir. 1999).

and the adoption of additional State rules could lead to additional litigation that might not provide any greater protection than existing FCC rules.

Moreover, in the event that there are differences in the way the proposed rules and the federal rules are interpreted and applied, telecommunications carriers will be forced to monitor and apply separate rules and encounter possibly inconsistent enforcement actions. These increased costs and inefficiencies would make it more expensive for competitive telecommunications carriers, like Comcast Phone, to provide innovative and competitively-priced services in the State of Washington. The FCC expressly recognized this fact and explained that “where a carrier’s operations are regional or national in scope, state CPNI regulations that are inconsistent from state to state may interfere greatly with a carrier’s ability to provide service in a cost effective manner.”¹⁰

One example of this potential problem is illustrated by the operation of varying state rules on a carrier’s customer call centers. Call centers are located by region and often serve multiple states. As such, call centers are faced with the unwieldy task of coordinating and complying with different rules. Specifically, customer service representatives would need to be familiar with differing rules as to the ascertainment of customer data; a situation that could potentially lead to a deterioration of carrier’s customer service standards. Moreover, because most telecommunications services are inherently jurisdictionally mixed it would be difficult to determine which rules apply in the event there are differences in terms or interpretations.

¹⁰ *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information, Second Report and Order and Further Notice of Proposed Rulemaking*, 13 FCC Rcd 8061, ¶ 16 (1998) (hereinafter “*Second Report and Order*”).

CONCLUSION

WHEREFORE, Comcast Phone -- for the foregoing reasons -- respectfully requests that the Commission incorporate the Company's comments set forth above in its corrections and changes to the Rules in Chapter 480-120 and Chapter 480-80.

Respectfully submitted this 30th day of June 2004.

COMCAST PHONE OF WASHINGTON,
LLC

By: _____

John G. Sullivan
Vice President & Chief Counsel
1500 Market Street
Philadelphia, PA 19102
Phone: 215-320-8816
Fax: 215-981-8508
Email: john_sullivan@comcast.com

Rhonda Weaver
Director, Government Affairs
440 Yauger Way, SW
Olympia, WA 98502
Phone: 360-357-1215
Fax: 360-357-1265
Email:
rhonda_weaver@cable.comcast.com