

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

In the Matter of Adopting) DOCKET NO. UT-990582
)
WAC 480-120-560) GENERAL ORDER NO. R-475
)
Relating to)
) ORDER ADOPTING RULES
Telephone Companies - Collocation) PERMANENTLY
)
.....)

1 **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and
Transportation Commission (Commission)¹ takes this action under Notice WSR # 00-17-
114, filed with the Code Reviser on August 17, 2000. The Commission brings this
proceeding pursuant to RCW 80.01.040 and RCW 80.04.160.

2 **STATEMENT OF COMPLIANCE:** This proceeding complies with the Open Public
Meetings Act (chapter 42.30 RCW), the Administrative Procedure Act (chapter 34.05
RCW), the State Register Act (chapter 34.08 RCW), the State Environmental Policy Act
of 1971 (chapter 34.21C RCW), and the Regulatory Fairness Act (chapter 19.85 RCW).

3 **DATE OF ADOPTION:** The Commission adopts this rule on the date this Order is
entered.

4 **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** The
proposal will promote competition in the telecommunications industry by providing
collocation rules that are fair, just and reasonable to all telecommunications carriers.
Collocation is a critical aspect of a competitive telecommunications service environment.
This rule establishes standard intervals and conditions for incumbent local exchange carriers
(ILECs) to make collocation space in the incumbents' offices available to competitive local
exchange carriers (CLECs). The rule also provides remedies when provisioning schedules
are not met, and establishes procedures governing situations where the incumbent contends
that space is not available.

5 **REFERENCE TO AFFECTED RULES:** This rule does not repeal, amend, or suspend

¹ In this Order, the Washington Utilities and Transportation Commission is referred to as the Commission,
and the Federal Communications Commission is referred to as the FCC.

any existing section of the Washington Administrative Code.

6 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:**

The Commission filed a Preproposal Statement of Inquiry (CR-101) on May 18, 1999, at WSR # 99-11-069.

7 **ADDITIONAL NOTICE AND ACTIVITY PURSUANT TO PREPROPOSAL**

STATEMENT: The statement advised interested persons that the Commission was considering entering a rulemaking on the collocation of competitive local exchange company facilities in the central offices of incumbent local exchange companies. The Commission also informed persons of the inquiry into this matter by providing notice of the subject and the CR-101 to all persons on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3), and by sending notice to all registered telecommunications companies and the Commission's list of telecommunications attorneys.

8 In the CR-101, the Commission established a June 11, 1999, deadline for interested persons to file comments and scheduled a workshop on July 15, 1999. The Commission received written comments from interested persons. At the workshop, Commission staff facilitated discussions with industry participants regarding whether the Commission should promulgate rules to address collocation issue. The Commission subsequently sought further information and clarification from participants on the subject matter and the scope of possible rules. On September 10, 1999, the Commission received supplemental comments from interested persons.

9 Commission Staff was generally persuaded to recommend that the Commission commence a rulemaking proceeding to consider the subject of collocation. The Commission invited interested persons to file additional supplemental comments in response to draft rule language jointly proposed by several parties, and comments were received on March 15, 2000. On March 23, 2000, a second workshop was conducted to discuss the proposed language and comments.

10 Based on the workshop discussions regarding draft rule language, the Commission further invited interested persons to file additional comments regarding draft rule language under consideration, and comments were received on May 15, 2000.

11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on August 17, 2000, at WSR # 00-17-114. The Commission scheduled this matter for oral comment and adoption under Notice WSR #00-17-114 at 9:00 a.m., Wednesday, October 25, 2000, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice, served to interested persons on August 18, 2000, provided the opportunity to submit written comments to the Commission.

- 12 **WRITTEN COMMENTS:** Pursuant to the Notice served on August 18, 2000, the Commission received written comments from Qwest Corporation (Qwest), Verizon Northwest Inc. (Verizon), Sprint Corporation, on behalf of United Telephone Company of the Northwest and Sprint Communications Company, L.P. (Sprint), Teligent Services, Inc. (Teligent), Winstar Wireless, Inc. (Winstar), the Washington Independent Telephone Association (WITA), and the Association of Communications Enterprises (Ascent). Parties generally commented on the need in general for a collocation rule and specifically commented on several proposed provisions.
- 13 **CHANGES FROM THE NOTICED LANGUAGE:** The proposed definition of “collocation” in WAC 480-120-560(1)(b) was changed in two respects: the word “nearby” was deleted from the reference to an ILEC’s premises in accordance with comments received from Verizon, Sprint, and Qwest; and the reference to “equipment” in that definition was supplemented to expressly include “microwave equipment,” as suggested by Teligent and Winstar.
- 14 The proposed rule provided that an ILEC must complete construction of ordered collocation space and facilities within 45 calendar days after the CLEC’s acceptance of a written quote *or* payment of one-half of the nonrecurring charges. Qwest and Verizon proposed that the Commission rule adopt a standard 90-day interval for collocation beginning when the CLEC accepts the price quote *and* deposits one-half of the non recurring collocation charge. Qwest stated that it had previously offered a 45-day interval to CLEC Rhythms Links, Inc., but Rhythms also was required to file a forecast as a precondition to provisioning within that interval. Qwest argued that CLECs should provide forecasts as a prerequisite to the proposed 45-day interval. Sprint recommended adoption of a 90-day interval for caged collocation, and a shorter 60-day interval for cageless and virtual collocation.
- 15 As a result of comments regarding the provisioning interval, Commission Staff proposed that rule language be revised to require that CLECs submit periodic forecasts to ILECs at least three months in advance of collocation orders as a precondition to the 45-day provisioning interval.
- 16 The Staff cited the Federal Communications Commission’s (FCC) August 10, 2000, order regarding collocation in its response to comments. *See Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98* (FCC Collocation Order). The FCC Collocation Order establishes a rule governing collocation, including provisioning intervals, but allows states to adopt rules that differ from the federal rule.² The proposed Commission rule is predicated on CLEC forecasting; therefore, the FCC rule

² See 47 C.F.R. § 51.321, as amended.

providing for a longer interval would govern in the absence of a forecast. The Commission's shorter interval provides an alternative to the FCC's rule and gives CLECs the incentive to provide accurate forecasts to ILECs which will help ILECs to plan collocation space in their offices. The proposed Commission rule was further revised to require that CLECs submit a deposit of one-half of the non-recurring charges for collocation as part of the ordering process, consistent with the FCC's rule.

- 17 The proposed rule previously provided for a 90-day interval as an exception to standard provisioning when "extraordinary circumstances" occur. Verizon and Qwest proposed a longer interval to account for extraordinary circumstances. Ascent commented that the proposed collocation rule would allow ILECs to establish provisioning intervals in certain circumstances that exceed the 90-day maximum under the FCC rule. The FCC rule requiring a 90-day interval does not provide an exception for extraordinary circumstances. The proposed rule is revised to delete provisions for extraordinary circumstances and to allow the FCC standard to apply in all circumstances except where a forecast is provided.
- 18 The proposed rule requires credits to be given to the CLEC for an ILEC's failure to provision collocation space within the specified interval. Qwest and Verizon commented that the credits amount to penalties, that they are not legally binding, and that they therefore should be eliminated from the rule. Staff responded that there are other instances where both Qwest and Verizon are subject to credits when service is not provided to customers on time. Staff argued that a "credits" are different from "penalties," and that the credit merely provides an incentive for ILECs to provision collocation in a timely manner and compensates CLECs for any undue delays.
- 19 Qwest, Verizon, Sprint, and WITA submitted written comments regarding the process governing the denial of a collocation order due to insufficient space within a particular central office. Qwest and WITA recommended that petitions for Commission review should be filed by CLECs rather than ILECs. Sprint proposed that ILECs be required to file a petition for review within a shorter time interval.
- 20 The proposed rule provides that the ILEC must notify the CLEC whether space is available in the central office. Based on the FCC's Order, Staff recommends shortening this notification from fourteen days, as originally proposed, to ten days. If space is not available, Staff does not believe the CLEC should be the party petitioning the Commission. Staff specifically recommended that the ILEC petition the Commission so that the burden of proof will be with the ILEC, which has access to the relevant facts. Staff notes that the ILEC need not petition the Commission unless the CLECs specifically challenges an ILEC on space availability.
- 21 Verizon also proposed that the rule should be expanded to address an ILEC's space reservation policies. Staff responds that the issue of space reservation previously was

addressed in Docket No. UT-960323, et al., and that the Commission's orders in that case provide sufficient guidance to all parties on this issue.

22 **RULEMAKING HEARING:** The rule proposal was considered for adoption, pursuant to the notice, in a rulemaking hearing during the Commission's regularly scheduled open public meeting on October 25, 2000, before Chairwoman Marilyn Showalter, Commissioner Richard Hemstad, and Commissioner William R. Gillis. The Commission heard oral comments from David Griffith and Glenn Blackmon, representing commission staff, Lisa Anderl, representing Qwest; Joan Gage, representing Verizon; Gregory Kopta, representing AT&T Communications of the Pacific Northwest, Inc., TCG Seattle, XO Washington, Inc., f/k/a NEXTLINK Washington, Inc., Electric Lightwave, Inc., Advanced Telcom Group, Inc., NorthPoint Communications, Inc., and GST Telecom Washington, Inc. (Joint CLECs); Lisa Rackner, representing Teligent; and Terry Berman, representing WorldCom, Inc. (WorldCom).

23 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED:** Qwest characterized the subsection providing for a credit when an ILEC fails to deliver ordered collocation space by the required delivery date (WAC 480-120-560(3)(e)) as a liquidated damages clause imposing a strict liability standard, and suggested that it be deleted from the rule. Qwest also stated concern that the credit provision may be applied in instances where self-provisioning by a collocating CLEC frustrates the ILEC's ability to fully perform by the delivery date. According to Qwest, it does not receive final payment until it fully performs, and no other incentive is necessary. Alternatively, Qwest proposed inserting language exempting its obligation to perform due to circumstances beyond its control.

24 The Commission agrees with staff and the Joint CLECs that performance incentives are an appropriate subject of rulemaking. The proposed credit is a measured incentive to promote compliance with reasonable performance standards, and does not constitute liquidated damages. The rule does not make any presumptions regarding the ability of parties to ascertain actual damages nor does the rule address the rights of parties to pursue other legal action. Commission rules already establish a precedent by providing for credits to consumers for missed service calls.

25 The Commission's rule does not impose deadlines for any of the intermediate tasks necessary for an ILEC to fully perform its duty. Accordingly, in cases where a requesting CLEC states an intent to self-provision any part of the collocation process, the ILECs duty to perform is tolled for the length of time required by the CLEC to complete self-provisioning. Self-provisioning delays caused by CLECs do not result in exposure to ILECs.

26 There was much discussion at the open meeting regarding the ability of parties to petition for waiver of Commission rules when circumstances warrant extraordinary consideration. WAC 480-120-011 states, in relevant part:

Upon proper showing of any utility, the commission may waive or modify, as to that utility, the provisions of any rules herein, except when such provisions are fixed by statute.

27 Qwest's arguments that the waiver process is potentially burdensome and that the process is only available after a breach of duty occurs are unpersuasive. WAC 480-120-011 establishes a valuable mechanism that ensures the reasonable application of Commission rules.

28 The Commission rejects all proposals for express exceptions to the provisioning interval established in the rule because such language would also serve as a potential restriction on the Commission's ability to exercise discretion when waiver is requested. Commission rules do not establish any deadline for the filing of a petition for waiver, and the Commission will consider all relevant circumstances.

29 Verizon states that it does not receive forecasts from CLECs and claims that its operations are not organized to provision based on forecasts. Verizon cites differing provisioning intervals in other jurisdictions and argues that some provisioning activities are beyond its control. The Company suggests that adoption be delayed pending the outcome of other proceedings before the Commission and the FCC.

30 The proposed WAC 480-120-560 establishes a process that provides ILECs with reasonable notice of CLEC collocation requirements and enables incumbent carriers to comply with their obligation to provide collocation within the proscribed provisioning interval. Commission Staff and the parties have dedicated a great deal of time and effort to develop a rule that fairly represents the capabilities of ILEC network operations in Washington State, and the Commission is convinced that the proposed rule will not benefit from any further delay. If experience under this rule, or any federal law or rule or state law require changes in the rule, it may be amended.

31 Teligent suggests that the Commission adopt additional terms and conditions to ensure that carriers using microwave or wireless transmission technologies receive non-discriminatory treatment. The Commission recognizes that carriers employing microwave or wireless technologies have collocation requirements that differ from wireline carriers; however, the proposed rule expressly applies to the placement of microwave equipment. Issues regarding the appropriate rate elements for microwave or wireless collocation are presently

under consideration in other proceedings before the Commission and are not germane to this rulemaking.

32 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission adopted the proposed rule without change.

33 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** In reviewing the entire record, the Commission determines that WAC 480-120-560 should be adopted to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect pursuant to RCW 34.05.380(2) on the thirty-first day after filing with the code reviser.

ORDER

34 THE COMMISSION ORDERS:

35 (1) WAC 480-120-560 is adopted to read as set forth in Appendix A, as a rule of the Washington Utilities and Transportation Commission, to take effect on the thirty-first day after the date of filing with the Code Reviser pursuant to RCW 34.05.380(2).

36 (2) This order and the rule set out below, after being recorded in the register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to chapters 80.01 and 34.05 RCW and chapter 1-21 WAC.

DATED at Olympia, Washington, this day of November, 2000.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

WILLIAM R. GILLIS, Commissioner

Note: The following is added at Code Reviser request for statistical purposes:

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, amended 0, repealed 0;
Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0,
repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0,
amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule
Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.