

September 8, 2003

VIA E-MAIL, FACSIMILE AND FIRST CLASS MAIL TO THE WUTC

Carole Washburn
Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Pk. Dr. S.W.
PO Box 47250
Olympia, WA 98504-7250

Re: *Docket No. UT-030704,*
Qwest's Petition for Waiver and Alternate Method of Reporting

Dear Ms. Washburn:

Public Counsel submits these comments in advance of the Commission's September 10, 2003 Open Meeting. Public Counsel respectfully requests that the Commission deny Qwest's petition for waiver of WAC 480-120-439(4) Service Quality Performance Reports, and order Qwest to comply with the rule as adopted by the Commission in Docket UT-990146.¹

Qwest's Petition Fails to Provide Compelling Evidence to Justify Granting a Waiver

Qwest's petition, as filed on May 14, 2003 and amended August 22, 2003 and September 5, 2003, requests a waiver of WAC 480-120-439 (4), which went into effect on July 1, 2003 and pertains to reporting of company performance with respect to completing orders for the installation or activation of access lines. Qwest's petition indicates that Qwest currently tracks these orders as they are *completed*, whereas the new reporting rule, WAC 480-120-439 requires companies to report performance based on orders *taken* on a monthly, quarterly, and six-month basis. Qwest Corporation's Petition for Waiver and Alternate Method of Reporting ("Waiver Petition"), pp. 2-4. Qwest's petition indicates that the company would incur "extraordinary expense" to modify its mechanized tracking systems to generate data based on orders taken. Waiver petition at p. 4.

Qwest's petition is overly vague in that it fails to indicate how much it would cost to make these changes to their tracking systems. The petition also fails to provide a detailed discussion or breakdown as to the type of data programming changes that are required in order to comply with the new rule as adopted by the Commission. We believe Qwest should provide more specific, detailed information regarding the nature and level of the alleged "extraordinary expense" the Company would incur to modify its tracking systems. We note that to the extent Qwest incurs expenses

¹ In the Matter of Amending, Adopting and Repealing Chapter 480-120 WAC Relating to Telephone Companies, Docket UT-990146, General Order No. R-507, Order Amending, Adopting and Repealing Rules Permanently, filed with the Code Reviser's Office December 12, 2002. (Hereafter "Commission Adoption Order").

associated with the new rule and the Commission determines those expenses are reasonable, Qwest is able to recover those costs through its rates.

Granting Qwest's Waiver Petition as Amended Would Impair the Ability of the Commission and Other Parties to Enforce Compliance with Performance Standards

Qwest's letter dated September 5, 2003, states that granting the petition as amended would not impair the Commission or other parties' ability to enforce compliance with the performance standards adopted by the Commission. Public Counsel strongly disagrees with this statement, particularly with respect to the monthly reports required to monitor compliance with the 5-day interval in completing orders of up to five access lines.

As described in the Staff memo, WAC 480-120-439(4) requires Class A companies to file reports on a monthly, quarterly, and six-month basis to track compliance with performance standards regarding completion of orders of up to five access lines within 5 days, 90 days, and 180 days respectively. Qwest's waiver petition proposes to provide the following two reports on a *monthly* basis to track compliance with the 5-day interval standard: 1) monthly data based on orders *completed*, and 2) Qwest's monthly "Aging Report," which reflects orders held due to lack of facilities. Waiver Petition at pp. 3-4, Amended Petition dated September 5, 2003 at p. 1.

To the extent that the Commission believes that granting a waiver is appropriate, Public Counsel respectfully requests the Commission consider granting the waiver on the condition that Qwest file a *monthly* pending order report, based upon data generated for the OP-15A diagnostic, which is also generated on a monthly basis. Docket UT-030388, Qwest's Long-Term PID Administration and QPAP Review. We believe that this monthly pending order report (using data from the OP-15A QPAP diagnostic), and the monthly completed order report, should be used to determine whether Qwest is in compliance with the 5-day performance standard established in WAC 480-120-105(a).

Public Counsel believes the "Aging Report" is insufficient to monitor and enforce compliance with WAC 480-120-105(a), requiring installation of 90% of orders of up to five access lines within 5 business days after the order date or later as requested by a customer, for the following reasons:

- ***Qwest's "Aging Report" only includes orders held due to lack of facilities.*** Because the Aging Report only reflects orders held due to lack of facilities, it captures only a fraction of the pending orders—and potentially only a very small fraction of the total orders pending. Indeed, there is an extremely large disparity between the pending orders report captured in OP-15A and the orders pending (described as "still open") in the Aging Report. For example, as indicated in Attachment A to these comments, the Washington QPAP performance results for OP-15A for May 2002 – April 2003 indicate that as of April 30, 2003, there were 900 pending residential orders and 215 pending business orders delayed for Qwest reasons. (Please note that we have also included the performance indicator definition for OP-15A as Attachment B to our comments). In contrast, the January to April 2003 "Aging Reports," included as confidential Attachment C to these comments, indicate that a very small number of orders are "still open" due to lack of facilities.

- ***There are several inconsistencies in Qwest's Aging Reports filed for 2003.*** Public Counsel believes there are several anomalies and inconsistencies in the Aging Reports filed by Qwest for 2003. The 2003 reports that have been filed by Qwest, for January to April 2003, are included as confidential Attachment C to these comments. For example, the April 2003 Aging Report indicates that some orders (held for facilities reasons) completed during the month of April had been pending for less than 60 days (but more than 30 days). In addition, some orders completed during April 2003 had been pending for more than 60 days. Since these orders were completed during April 2003, but had been pending for more than 30 days, we would expect to see these orders reflected in the March 2003 report as orders that are "still open." However, in reviewing Qwest's March 2003 Aging Report it is very clear those orders are not captured in the report, and thus it appears that these reports contain some inaccuracies.
- ***Qwest does not describe the process and criteria used to determine whether an order is held due to lack of facilities.***

For these reasons, we believe Qwest's Aging Report should not be relied upon to determine compliance with WAC 480-120-105(a).

Qwest's Service Quality Reports Should Include Data Regarding Customer Guarantee Programs

To the extent that the Commission believes that granting a waiver is appropriate, Public Counsel respectfully requests the Commission consider granting the waiver on the condition that Qwest include information in their monthly service quality reports regarding the company's "Delayed Primary Basic Service" guarantee and its "Missed Commitment and Appointment" guarantee, as set forth in its tariff WN U-40, Section 2. While Qwest provides the Commission with data regarding its other customer guarantee programs, such as the out-of-service guarantee, Qwest does not currently provide data regarding the delayed primary service guarantee or the missed appointment/commitment guarantee.

In response to a request from Public Counsel, Qwest has recently provided Public Counsel with data regarding these two customer guarantee programs. Public Counsel has found some inconsistencies and anomalies in the data, and we are currently working with Qwest in an effort to clarify these issues. By way of background, Qwest committed to continue and expand upon various customer guarantee programs as part of the US West – Qwest merger settlement, approved and adopted by the Commission in its Ninth Supplemental Order in Docket No. UT-991358. Qwest also committed to continue these programs as part of the recent settlement regarding the sale of the Dex directory business, approved and adopted by the Commission in its Tenth Supplemental Order in Docket No. UT-021120.

We believe the data for the delayed primary basic service guarantee, as well as the missed appointment/commitment guarantee is relevant in the context of this waiver petition, because in order to properly implement these programs, Qwest must be able to track "pending orders." The data should therefore help provide a sense of orders pending, in addition to the QPAP data generated for OP-15A. In addition, the data is also relevant to assure compliance with implementation of the settlement agreements mentioned above. In light of the fact that Public

Counsel has detected some apparent inconsistencies with the data Qwest has provided to our office, we believe it would be very valuable for the Commission to have an opportunity to review this data.

Conclusion

In summary, for the reasons outlined above Public Counsel respectfully requests that the Commission deny Qwest's petition and order Qwest to comply with WAC 480-120-439(4) as adopted by the Commission. Granting Qwest's waiver would substantially weaken the rule and is not in the public interest. If the Commission determines that a waiver should be granted, we respectfully request that the Commission deny the petition in its current form, and require Qwest to further amend its petition to track pending orders of up to five access lines on a monthly basis using data from QPAP PID OP-15A. We also request that the Commission require Qwest to include data regarding all customer guarantee programs in the company's monthly service quality reports filed with the Commission.

Finally, if the Commission grants Qwest's waiver, we respectfully request that the Commission provide clear guidance as to how the company's performance with WAC 480-120-105 will be evaluated for purposes of determining the amount of penalties that shall apply if Qwest fails to meet the performance standards.

Mary Kimball of our office plans to attend the Commission's September 10, 2003 open meeting should you have any questions regarding these comments.

Very truly yours,

Simon ffitc
Assistant Attorney General
Public Counsel Section Chief

cc: Erin Hannan
Glenn Blackmon
Lisa Anderl