

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In re the Matter for the Petition of Qwest Corporation for a Declaratory Order re WAC 480-120-262(3), or , in the Alternative, Petition for Wavier of WAC 480-120-262(3)

DOCKET NO. UT-032063

COMMISSION STATEMENT OF  
FACT AND LAW

Introduction

1           The Petition for Declaratory Order or in the Alternative, Petition for Exemption of Qwest Corporation in Docket No. UT-032063 asks the Utilities and Transportation Commission (Commission) to enter a declaratory order concluding that WAC 480-120-262(3) applies to the provision of retail operator services and does not apply to operator services provided through wholesale agreements, or in the alternative, asks the Commission to grant a waiver from WAC 480-120-262(3) for operator services provided to Competitive Local Exchange Carriers (CLECs) and resellers through wholesale agreements. Commission Staff files this statement and submits comments in response to the Commissioner's December 29, 2003 notice.

Staff recommends entering a declaratory order.

2           Staff recommends the Commission enter a declaratory order concluding that WAC 480-120-262(3) applies to the retailer providing operator services, but does not

apply to the wholesaler providing operator services through wholesale agreements. Since the meaning of WAC 480-120-262(3) does not appear to be controversial, Staff recommends against setting an additional briefing schedule unless a substantial controversy arises as to the meaning of WAC 480-120-262(3) based on all briefs filed by the deadline set in the notice. Staff opposes determination of this matter through a waiver for the reasons set forth below.

Staff is a necessary party.

3           The resolution of this matter has the potential to materially affect the Commission's investigative and enforcement responsibilities for which Staff has the responsibility to carry out. RCW 80.01.030 and RCW 80.01.040. Furthermore, Staff has specialized knowledge and expertise regarding the retail and wholesale provision of operator services and has a statutory obligation to provide the Commission notice of such information. *Id.* Therefore, Staff is a necessary party in this matter pursuant to RCW 34.05.240.

WAC 480-120-262(3) is intended to apply only to retailers.

4           In summary, WAC 480-120-262(3) requires an Operator Service Provider (OSP) providing operator services from pay phones and other call aggregators to provide an oral rate disclosure message to consumers. In order to determine the scope of WAC 480-120-262(3) the Commission must determine whether the

definition of OSP contained in WAC 480-120-262 refers to the retailer providing services directly to the public, the wholesaler providing services to the retailer, or both?

5           A review of the entire rule provides ample clarification on the intent of the rule on this question. *See State v. Costic*, 117 Wn.App. 491, 499, 72 P.3d 190 (2003) (language is interpreted in light of the statute as a whole); *State v. C.J.*, 148 Wn.2d 672, 685, 63 P.2d 765 (2003) (in interpreting a statute a court strives to advance its underlying legislative purpose); *Multicare Medical Center v. State*, 114 Wn.2d 572, 591, 790 P.2d 124 (1990) (rules of statutory construction apply to interpretation of administrative rules).

6           The purpose of the rule is to facilitate consumer protection, and as such the rule is directed to the retail provider who offers service to the public directly through its customer locations. For example, WAC 480-120-262 states “[t]his section applies to OSPs providing operator services from pay phones and other call aggregator locations” and “[e]ach OSP must maintain a current list of the customers it serves in Washington and other locations and telephone numbers where the service is provided.” “Customer” is defined in WAC 480-120-262 as “the call aggregator or pay phone service provider (PSP) contracting with an operator service provider (OSP) for service, such as hotel, motel, hospital, correctional facility, prison,

campus, or similar entity.” Since a wholesale provider is not contracting with the call aggregator or PSP for service, it may be inferred that the wholesale provider is not covered by this portion of WAC 480-120-262. Similarly, WAC 480-120-262 subsections (2), (4) (5), (6), (7), (8), (9), and (10) contemplate an individual retail service provider responsible for notice to consumers and other requirements rather than dual responsibility and dual notification by both the retailer and the wholesaler. Therefore, consistent with the entirety of WAC 480-120-262, subsection (3) of the rule should be interpreted to apply only to the retailer.

Public policy supports application of WAC 480-120-262(3) to retailers only.

7 Staff supports Qwest’s petition for a declaratory order to the effect that WAC 480-120-262(3) applies to the retail provision of operator services. Staff differs with Qwest, or would state differently than Qwest, the application of the rule to the provision of wholesale operator services.

8 The purpose of WAC 480-120-262(3) is to ensure that the general public receives sufficient information about operator service rates to permit individuals to determine if making an operator assisted call is worth the price to be paid. Many operator service providers (OSPs) do not own and operate the equipment (or all the equipment) needed to provide operator assistance and to complete calls. Many purchase the service of companies like Qwest, which does own and operate the

necessary equipment to provide the service marketed under retailers' names. That is, companies like Qwest make their equipment and operators available on a wholesale basis. Qwest asks for a declaratory order that when it acts as a wholesaler to OSPs, it (Qwest) is not responsible for meeting the requirements of WAC 480-120-262(3).

9           Staff's reading of the rule is that the obligation to provide rate information falls on the retail provider of operator services. A retail provider that uses its own equipment, services, and operators to provide the offered service, rather than relying on wholesale service, and does not provide rate information as required by WAC 480-120-262(3) is not in compliance with the rule. Similarly, a retailer of OSP service that contracts with a wholesale provider but still does not provide the rate information required by WAC 480-120-262(3) is not in compliance with the rule.

10           In the circumstance where a wholesaler is used, in Staff's view, the retailer and not the wholesaler would be responsible to the Commission in any enforcement action. A retailer should not be permitted to avoid responsibility for informing the general public of rates for OSP service because the retailer has chosen a wholesale provider that cannot provide rate information required by WAC 480-120-262(3).

11           Qwest and Verizon have stated they cannot, with respect to their retail offerings of operator services, comply with WAC 480-120-262(3). In July, 2003, the

Commission provided a short-term exemption to Qwest and exempted it from the requirements of the rule until it revised all its operator services rates to reduce them below the benchmark rate. Qwest reduced its rates in October 2003. Verizon has received an exemption through 2005 which requires it to inform callers that the rate will not exceed a maximum price, rather than provide a particular rate quotation for each call. Retail providers of operator services should not receive the same exemptions as Qwest and Verizon based only on choosing one or the other company as a wholesale provider. If there are wholesale providers of operator services that can provide the required rate quote, a retail provider of operator services should have to make an individual case before the Commission if it seeks a waiver of its obligations under WAC 480-120-262(3).

A waiver from WAC 480-120-260(3) should not be granted to a wholesaler.

12 Staff asserts that the proper party to seek a waiver, if a waiver is sought, is the retail provider. Since WAC 480-120-260(3) should not be interpreted to apply to the wholesale provider, there is no need for a wholesale provider to seek a waiver from the rule. Therefore, Staff recommends that this matter be decided as a declaratory order and not as a waiver or exemption.

## Conclusion

13 Staff recommends the Commission take up the petition and, after the process suggested, enter a declaratory order. Staff recommends that such an order clarify that the responsibility to provide rate information under WAC 480-120-262(3) rests with the retail offeror of OSP services and that the requirement apply whether the retailer provides the actual service or contracts with a wholesaler to complete transactions. Staff does not recommend that this matter be decided as a waiver or exemption.

DATED this 6<sup>th</sup> day of January, 2004.

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