

**BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**Chapter 480-80 WAC Commission General
– Tariffs, Price Lists, and Contracts;
Customer Notice Rules, Chapters 480-90,
480-100 and 480-120 WAC**

DOCKET NO. U-991301

**Chapter 480-121 WAC Registration,
Competitive Classification and Price Lists of
Telecommunications Companies; WAC 480-
120-052, Prepaid Calling Services and WAC
480-120-058, Protection of Customer
Prepayments**

DOCKET NO. U-991922

COMMENTS OF QWEST CORPORATION

ON

**PROPOSED TARIFF, PRICE LISTS, AND CONTRACT RULES;
CUSTOMER NOTICE RULES;
REGISTRATION, COMPETITIVE CLASSIFICATION AND PRICE LISTS OF
TELECOMMUNICATIONS COMPANIES;
PREPAID CALLING SERVICES; AND PROTECTION OF CUSTOMER
PREPAYMENTS**

October 22, 2001

Qwest Corporation ("Qwest") provides the following comments on the draft rules for Docket No. UT-991301, Chapter 480-80 WAC Commission General - Tariffs, Price Lists and Contracts and Customer Notice Rules, Chapter 480-90, 480-100, and 480-120 WAC and Docket No. UT-991922, Chapter 480-121 WAC Registration, Competitive Classification and Price Lists of Telecommunications Companies, WAC 480-120-052, Prepaid Calling Services and WAC 480-120-058, Protection of Customer Prepayments that the Commission distributed by its October 10, 2001 notice in these dockets. Qwest supports the draft rules to the extent they clarify and better organize existing regulatory requirements.

**I. CHAPTER 480-80 WAC COMMISSION GENERAL -
TARIFFS, PRICE LISTS AND CONTRACTS RULES**

Qwest appreciates the revisions in the July 24, 2001 and the October 10, 2001 proposed Chapter 480-80 WAC Commission General - Tariffs, Price Lists and Contracts rules that improve upon the prior May 9, 2001 draft. The previous concerns raised by Qwest with respect to a number of issues have been addressed and resolved in the latest proposed rule.

However, Qwest continues to be concerned with the lack of parity in application of rule requirements for competitively classified services offered under price list or contract with the requirements for services offered by competitively classified companies. Under the proposed rules, services, which are competitively classified, such as intraLATA toll, are subject to different filing requirements, depending upon the status of the offering carrier. Regardless of whether the Commission has granted competitive classification to a company or not, the factual analysis and legal conclusions that the Commission must reach in granting competitive classification, either for a company under RCW 80.36.320, or a service under RCW 80.36.330, are exactly the same. Thus, as previously stated, there is no basis for treating competitively

classified services differently based on the identity of the carrier providing the service. Qwest will not repeat its earlier comments concerning the three factors the Commission must consider in evaluating the proposed Price List Rule. (See Qwest March 2, 2001 comments). Qwest continues to advocate the Commission adopt rules that affect telecommunications companies in a competitively neutral manner.

COMMENTS ON SPECIFIC DRAFT RULES

A. The Commission should refrain from adopting a new cost standard in the rules.

Qwest continues to oppose the cost standard proposed by the Commission staff within the following proposed rules:

- Banded rate tariff filings: WAC 480-80-112(1)(b)
- Special contracts for telecommunications companies not classified as competitive: WAC 480-80-142(7)(b)(iii)
- Using contracts for services classified as competitive: WAC 480-80-242(4)
- Filing contracts for services classified as competitive: WAC 480-80-241(6)
- Price lists format and content: WAC 480-80-204(6)

These proposed rules introduce a new cost standard that requires inclusion of the price charged to other telecommunications carriers for any essential function used to provide the service, or any other commission-approved cost method. Specifically, WAC 480-80-112(1)(b), WAC 480-80-142(7)(b)(iii), and WAC 480-80-204(6) include the following statement:

Costs will be determined under a long run incremental cost analysis, including the price charged to other telecommunications carriers for any essential function used to provide the service, or any other commission-approved cost method.

Qwest opposes this proposed standard in these rules. WAC 480-80-242(4) and 480-80-241(6) reference the proposed cost standard and should also be eliminated.

Qwest is not aware of a Commission decision specifying such a cost determination, specifically with respect to imputed cost for essential functions, and believes this matter should receive full hearing before it is codified in a rule.

The Commission recently had this issue before it and chose to decline the request to impose such a cost standard. In the Seventh Supplemental Order in Docket No. UT-000883 (the competitive classification of certain business services), at page 20, paragraph 77, the Commission declined the MetroNet/ATG request to impute rates of essential services to determine a cost floor. The Commission stated the following:

"The conditions proposed by MetroNet/ATG would go beyond the level of regulation that applies today to a noncompetitive service offered under tariff."

The Commission made this ruling because the Company was not proposing a rate change as part of its filing and the existing rates in question "were supported by cost studies demonstrating rates were above the costs of providing the service." The Commission ruled similarly in the competitive classification of Directory Assistance services in Docket No. UT-990259 (April 28, 1999).

The Commission ruled differently in Docket No. UT-990021 - the competitive classification of toll services (Jan. 1999). In that decision the Commission ruled "that any rate change must continue to cover its related costs and pass the imputation test." However, the imputation test for toll services has been in place for many years and is not a new requirement.

In the Eighth Supplemental Order in Docket No. UT-990022 (the competitive classification of DS1 and above services), at page 13, the Commission stated that "U S WEST cannot name prices below the cost floors established ... in Docket No. UT-950200." The cost floor established in that proceeding (U S WEST rate case) was long run incremental cost.

It is clear from the decisions made to date that the cost standard needs to be considered on a service specific basis that includes a recognition of relevant market conditions and available technology. Such a finding is also only required if Qwest proposes a rate reduction that the Commission staff or other parties believe to be priced below cost. The Commission should refrain from adopting a general rule requirement that does not take service specific differences or market conditions into consideration that may drive a different conclusion. Qwest believes this decision should not be made without a thorough review of the consequences of such a decision on a service specific basis.

For example, the proposed rule has significant implications with respect to how costs are imputed when the rates and costs are deaveraged for UNEs and existing retail rates are based on a statewide average cost. The proposed rule also needs to be considered with respect to residence service, which is traditionally subsidized and which may be selectively competitively classified on a geographic, location specific basis in the near future. In addition, there is no statutory requirement that the rate for a service include "the price charged to other telecommunications carriers for any essential function used to provide the service". RCW 80.04.130 requires a company to "file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service."

Therefore Qwest respectfully suggests the following statement at WAC 480-80-112(1)(b) - lines 399-403, WAC 480-80-142(7)(b)(iii) - lines 601-603 and WAC 480-80-204(6) lines 745-747 be eliminated or revised as follows:

Costs will be determined under a long run incremental cost analysis or any other commission-approved cost method;

The Commission should address the question of cost on a service specific basis, as they have done in prior orders, as the need arises.

B. Proposed Qwest rule revisions.

Qwest offers proposed revisions to the following rules:

- Banded rate tariff filings: WAC 480-80-112(1)(c)
- Interpretation and application of price lists: WAC 480-80-202(1) and (2)
- Price lists format and content: WAC 480-80-204(3) and (4)
- Special contracts for telecommunications companies not classified as competitive: WAC 480-80- 142(8)(a)

The proposed revisions are intended to clarify the intent of the proposed language, as discussed and for the most part previously reviewed with the Commission staff at the June 12, 2001 workshop.

New Section: 480-80-112 Banded rate tariff filings.

Qwest is not certain of what information is required in WAC 480-80-112(1)(c), line 404.

As currently proposed, WAC 480-80-112(1)(c) states the following:

- (c) Information detailing the revenue impact of the banded rate tariff.

This rule is unclear as to what revenue impact information is required. Qwest respectfully proposes the following revision to clarify the intent of the rule:

- (c) Information detailing the revenue impact *of the proposed rate change within* the banded rate tariff.

New Section: 480-80-202 Interpretation and application of price lists.

Section (1), lines 700-702 should be qualified to investigations in accordance with RCW 80.36.330(4). As currently proposed, WAC 480-80-202(1) states:

A price list is not a tariff and is not reviewed or approved by the commission at the time of filing. The commission will, when appropriate, investigate a price list or complain against a price list.

Qwest respectfully suggests WAC 480-80-202(1) be modified as follows:

A price list is not a tariff and is not reviewed or approved by the commission at the time of filing. The commission will, when appropriate, investigate a price list or complain against a price list, *in accordance with RCW 80.36.330(4)*.

WAC 480-80-202(2) continues to imply the Commission will review the price list to determine if the provisions are conflicting or ambiguous. As currently proposed, WAC 480-80-202(2) states:

If the commission determines that a telecommunications company's price list or other offer of service is ambiguous or conflicts with other offers, it will construe the conflict or ambiguity in favor of the customer.

If the Commission does not wish to view the price list as a document or filing with legal effect, as implied in Section (1), then the Commission should refrain from involvement in disputes after the price list has become effective. The Commission should either regulate price lists or refrain from regulating any aspect of a price list other than as specified in RCW 80.36.330(4). In addition, the proposed language suggests to consumers that a formal complaint is not required for price list disputes. This is misleading since the Commission cannot resolve a formal customer dispute without a full hearing as provided for in RCW 80.04.110.

Qwest respectfully requests the Commission omit 480-80-202(2). The Commission should refrain from taking a hard-and-fast position as part of its rules. Such a position does not

allow for those circumstances where the Commission may choose to rule differently than the manner specified in the proposed rule. Nor is it necessary for the Commission to include this result as part of its rules. The Commission will rule as it deems appropriate and does not require a rule to enable such a disposition.

Should the Commission decide to retain the proposed language, Qwest respectfully suggests the following modification to WAC 480-80-202:

- (1) A price list is not a tariff and is not reviewed or approved by the commission at the time of filing. The commission will, when appropriate, investigate a price list or *formal* complaint against a price list, *in accordance with the provisions outlined in RCW 80.36.330(4)*.
- (2) *Upon investigation and a determination* that provisions of a price list are conflicting or ambiguous, *after full hearing in accordance with RWC 80.04.110*, the *Commission* may construe the conflict or ambiguity in favor of the customer.

These revisions will clarify the process required to reach resolution on price list issues that arise after a price list is in effect.

New Section: 480-80-204 Price lists format and content.

Qwest objects to the disparate treatment proposed in this rule section concerning the filing requirements for price lists. It is unclear why the Commission staff would propose detailed tariff format and content requirements for non-competitive companies in proposed WACs 480-80-105 *Tariff filing instructions*, 480-80-102 *Tariff content*, 480-80-103 *Tariff format*, 480-80-111 *Substitute tariff filings*, 480-80-112 *Banded rate tariff filings*, 480-80-131 *Withdrawing a tariff filing* and 480-80-134 *Discontinuing a service or services* and find that customers of service from competitive companies would not require a comparable structure for price lists. While Qwest supports the general nature of the price list format and content requirements proposed in this rule section, it cannot support the more burdensome requirements imposed on

companies who must file tariffs. The requirements specific to tariff format and content create costs that are not required of competitive providers. This results in disparate regulation. Qwest objects to this disparate treatment. Regulated companies should be given the same latitude in tariff format and content as competitive providers are given in filing price lists.

Furthermore, WAC 480-80-204(3) and (4) should be modified to clearly state that the rate for the service must be publicly available. As currently proposed, WAC 480-80-204(3) states:

(5) A price list of a competitive telecommunications company may state the rates, charges, or prices as maximum amounts rather than specific prices.

As currently proposed, 480-80-204(4) states:

(6) A price list of a noncompetitive telecommunications company offering a service classified as competitive under RCW 80.36.330 may state the rates, charges, or prices as maximum and minimum amounts rather than specific prices. The minimum price must comply with the cost requirement in subsection (6).

However, the rule does not require the rate charged to be published, available on a web site or disclosed to the customer. Qwest understood the Commission staff to require such based on a discussion at the June 12, 2001 workshop. The rule as currently drafted only requires the price list to include either the maximum amount or the minimum and maximum amount; it does not require the applicable amount to be price listed.

New Section: 480-80-142 Special contracts for telecommunications companies not classified as competitive.

WAC 480-80-142(8)(a), line 620 should be limited to the quantity and type of service provided. Information about the nature and characteristics of the service provided may be proprietary information capable of being used by other carriers as competitive intelligence and

therefore should not be made public. A Company should be allowed to protect this information.

Qwest respectfully requests subsection (8)(a), line 620 be modified as follows:

- (a) The quantity and type of service provided;

II. CHAPTERS 480-90, 480-100 AND 480-120 WAC

CUSTOMER NOTICE RULES

Qwest supports the draft rules for Chapters 480-90, 480-100 and 480-120 WAC Customer Notice Rules to the extent they clarify and better organize existing regulatory requirements. Qwest appreciates the revisions in the July 24, 2001 and the October 10, 2001 proposed rules that improve upon the prior draft. The previous concerns raised by Qwest with respect to a number of issues have been addressed and resolved in the latest proposed rule. In

the following comments, Qwest proposes further revisions to the following proposed rules:

- Notice of tariff changes other than increases in recurring charges and restrictions in access to services: WAC 480-90-195.
- Adjudicative proceedings where public testimony will be taken: WAC 480-90-197.
- Posting of tariffs for public inspection and review: WAC 480-120-193.
- Publication of proposed tariff changes to increase charges or restrict access to services: WAC 480-120-194.

The proposed revisions in WACs 480-90-197, 480-120-193 and 480-120-194 are intended to clarify the intent of the proposed language and for the most part were previously reviewed with the Commission staff at the August 3, 2001 workshop. Qwest continues to oppose the requirement for notice of local tax changes in WAC 480-90-195.

COMMENTS ON SPECIFIC DRAFT RULES

A. The Commission should refrain from adopting a rule that requires notice of local tax changes - WAC 480-90-195(1) requires notice of tax changes.

Qwest continues to oppose the requirement in WAC 480-90-195(1) concerning notice requirements for local taxes. Local tax changes are not initiated by the Company but are initiated by the local jurisdiction. The Company performs a "pass-through" mechanism by collecting the taxes and remitting them to the appropriate jurisdiction. The tax is not assessed by telephone number but rather by customer address since it is based on the locality of the customer. Therefore a customer notice requirement cannot be done in the same fashion as a telecommunications service rate change. The Company would have to write a "local tax" specific software program, designed based on the specific customer address, to accomplish the notice obligations required under proposed WAC 480-90-195(1). Presently customer notice provisions are distributed based either on a service specific basis or a telephone prefix basis and do not require the production of a software program to generate a notice. Local taxes are applied based on the service address which may even differ from the billing address. To implement this requirement, Qwest would first need to create ("write") a software program to identify each customer affected by the tax change. Then it could mail a direct mail piece to each customer. This requirement would delay implementation of tax changes, is burdensome, requires resources and will create a new cost not previously incurred by the Company for a rate change not initiated by the Company. Qwest respectfully requests the Commission omit this requirement in WAC 480-90-195(1).

B. Proposed Qwest rule revisions

WAC 480-90-197 Adjudicative proceedings where public testimony will be taken.

Qwest respectfully requests the original language be retained that qualified the application of the rule to only one notice. The Commission staff previously qualified the number of notices required by the proposed rules to a single notice in its September 18, 2001 workshop handout. At that time, the staff stated that the rule did not envision duplicate notices and agreed to add the following language:

Unless otherwise ordered by the commission, the company will not be expected to provide customer notice for public hearing if it has already noticed each affected customer in accordance with WAC...

Qwest respectfully request this qualifying proposed language be added to WAC 480-90-197(1).

In addition WAC 480-90-197(1) requires notice in the bill package. There may be situations in which a direct mail piece is more appropriate because not all customers subscribe to the service at issue. Qwest respectfully suggests the rule be modified to provide for other notice provisions, or at least a direct mail provision, as well.

WAC 480-120-193 Posting of tariffs for public inspection and review.

Qwest respectfully requests the requirement at (1)(d) be limited to customer notices of tariff changes. It is not clear what is intended by the proposed rule language.

WAC 480-120-194 Publication of proposed tariff changes to increase charges or restrict access to services.

Qwest opposes the requirement to send a notice or a press release to every daily paper included in WAC 480-120-194(1) when it sends notice to each customer that would be affected by the proposed change. This requirement was not previously included as part of this option and

is unnecessary since each customer will be individually notified. It serves no purpose other than to attempt to stimulate media attention. Media notification has been previously included in the "published notice" option. This requirement makes sense when each individual customer is not specifically notified. However, the latest version requires notice to the "news editor" at 480-120-194(2)(c). Qwest opposes a specific requirement of notification to the news editor.

WAC 480-120-194(3) should qualify the obligations as to "when applicable" since all of the requirements are not necessary if the company is restricting access to service(s). The introduction should be revised as follows:

"The published notice required by this rule must include, when applicable, at a minimum:"

Qwest also respectfully requests (3)(e) be combined with (3)(d) since it accomplishes the same purpose. (3)(d) should be revised as follows:

(d) A comparison of current and proposed rates by service; or an example showing the monthly increase of the average customer's bill based on the proposed rates (e.g. ...)

III. CHAPTER 480-121 WAC

REGISTRATION, COMPETITIVE CLASSIFICATION AND PRICE LISTS OF TELECOMMUNICATIONS COMPANIES

Qwest appreciates the revisions made in the latest proposed rule and has no further comments.

IV. WAC 480-120-052 PREPAID CALLING SERVICES

Qwest appreciates the revisions made in the latest proposed rule and has no further comments.

V. WAC 480-120-058 PROTECTION OF CUSTOMER PREPAYMENTS

Qwest appreciates the revisions made in the proposed rule and has no further comments.

VI. CONCLUSION

Qwest appreciates the staff efforts to incorporate a number of changes proposed by the industry at the June 12, 2001, August 3, 2001, and the September 6 and 18, 2001 workshops. Qwest continues to be concerned with the proposed price list and contract rule sections that treat competitors in a disparate manner and or rules that unreasonably discriminate against a utility that engages in areas where the service it provides has been classified by the Commission as competitive. Qwest also opposes all rule proposals that increase costs unnecessarily as previously addressed in these comments.