

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

In re the Matter of the Petition of)	DOCKET NO. UT-032063
)	
QWEST CORPORATION)	ORDER NO. 01
)	
For a Declaratory Order re WAC 480-120-262(3), or, in the Alternative, Petition for Waiver of WAC 480-120-262(3))	ORDER DECLARING QWEST WHOLESALE OPERATOR SERVICE RESPONSIBILITY
)	
.....)	
)	

1 **Synopsis:** *The Commission declares that Qwest, when acting as a contractor providing wholesale operator services on behalf of another telecommunications service provider, is not primarily responsible for compliance with the requirement in WAC 480-120-439 to provide accurate information about rates and charges to consumers for calls using operator services. The retail contracting company is responsible for the accuracy and timeliness of the information provided to consumers.*

2 This matter was brought on by the petition of Qwest Corporation, filed on December 15, 2003, seeking a declaratory order as to the application of WAC 480-120-262(3) or, in the alternative, an exemption from the rule.

3 The Commission published notice of the petition and of an opportunity to respond, to persons believed interested in the topic, on December 29, 2003. In response, the Commission received comments from Verizon Northwest, Inc. (Verizon), which stated no opposition to entry of a declaratory order, and from Commission Staff, which supported entry of a declaratory order.

4 The parties are represented as follows: Qwest Corporation, by Lisa A. Anderl and Adam Sherr, attorneys, Seattle; Verizon, by Joan Gage, state manager, Regulatory Affairs, Everett; and Commission Staff, by Christopher Swanson, assistant attorney

general, Olympia.

DISCUSSION

Background.

5 WAC 480-120-262, pertaining to Operator Service Providers, became effective on July 1, 2003. The relevant text, set out in full in Appendix A, provides that a company offering operator services to the public (including prison phones, “store and forward” phones, and “smart” phones) must give certain rate quote options to consumers, based on whether the charge to a consumer exceeds a “benchmark” established in the rule. The rule also provides that a charged rate must not exceed the rate quoted.

6 Qwest is a provider of operator services (“assisted” calls¹) to its own retail customers. It also acts as a contractor of actual (wholesale) operator services for other companies, such as resellers or competitive local exchange companies (CLECs) that offer operator-assisted calls to the public. In that situation, the retail company is the operator service provider, or OSP, but it obtains the means to provide rate quotations under a wholesale contract with Qwest. Qwest operators have direct contact with the consumer in the name of the OSP. Statutes provide that violations of commission rules such as WAC 480-120-262 are subject to sanctions that include monetary penalties as well as the potential for criminal liability.

Qwest’s request.

7 Qwest asks the Commission to clarify the nature of Qwest’s responsibility for potential penalties for violations of the rule when it is not the retail operator service provider on a call, but merely provides the operator services on the call on behalf of an OSP pursuant to a wholesale agreement.

8 In such situations, it says, the retail OSP may not give Qwest timely or accurate

¹Traditionally these have been called “operator-assisted” calls, but in today’s technologically advanced environment a computer may actually provide the information in some situations.

information about the rates to apply, or the retail OSP may charge the consumer a different rate from the rate that it instructed Qwest to quote. Qwest urges that while it is an OSP as far as its own traffic is concerned, it should not be held responsible for the failure of other companies with respect to their retail traffic to ensure that Qwest operators receive accurate information to offer consumers. Qwest asks for a declaratory order stating the limits of its liability.

Commenters' Positions.

- 9 Verizon and Commission Staff both responded to Qwest's petition. Verizon states that it does not view the rule, WAC 480-120-262, as applying to wholesale services (consistent with Qwest's proposal), and that it has no objection to entry of the requested order.
- 10 Commission Staff supports Qwest's proposal, presenting an analysis contending that WAC 480-120-262 does not apply to wholesale operator services, but only to the retail companies on whose behalf the wholesale operator services are provided.
- 11 Commission Staff begins by noting that rules of statutory construction apply to administrative rules.² It states that a review of the entire rule provides ample clarification on the intent of the rule on this question.
- 12 Staff notes that WAC 480-120-262(3) requires an OSP serving 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), Staff suggests, 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

² 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).

the retailer, or both.

- 13 Commission Staff reasons that 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 subject to this portion of WAC 480-120-262. Similarly, WAC 480-120-262 subsections (2), (4) (5), (6), (7), (8), (9), and (10) contemplate application to an individual retail service provider responsible for notice to consumers and other requirements; they do not contemplate dual responsibility and dual notification by both the retailer and the wholesaler. Therefore, Staff suggests, consistent with the entirety of WAC 480-120-262, subsection (3) of the rule should be interpreted to apply only to the retailer.

Conclusion.

- 14 The Commission finds that the analysis suggested by Commission Staff appropriately defines the matter at issue and the Commission should declare that WAC 480-120-262 does not apply to Qwest’s provision of operator services to

consumers when it is acting as a wholesale provider of those operator services based

on information provided by the OSP.³

15 As Commission Staff suggests, however, we clarify this view to point out that the rule does apply to the retail OSP that engages Qwest to act on its behalf in serving the public. A retail OSP must be certain that its wholesaler complies fully with the rule, and will be fully responsible for any failures to comply with the rule. In particular, Qwest is providing retail OSP services under exemption from the rule,⁴ and in order to gain the exemption they have indicated that they cannot provide the required services. It follows from our views in this declaratory order that any retail OSP using Qwest as a wholesale provider must also seek an exemption to the extent of the Qwest's inability to comply with requirements of the rule applicable to the retailer's services, and that it might need to demonstrate that wholesale operator services are unavailable that comply with the rule.

16 Upon the process described above and for the reasons described above, the Commission declares that the primary responsibility to provide accurate rate information under WAC 480-120-262(3) rests with the retail offeror of OSP services, and not with Qwest when it acts as a wholesaler of such services. The rule applies to the retail OSP whether the retailer provides the actual service or contracts with Qwest to complete transactions.⁵

³ We note that Qwest alternatively requested an exemption from the rule for wholesale OSP services. Inasmuch as the rule is inapplicable to Qwest's wholesale OSP services, it would be inconsistent and inappropriate to grant it an exemption from the rule for the provision of wholesale services.

⁴ In Qwest's case, its own rates are below the benchmark and it need not provide additional information.

⁵ This order does not address situations in which Qwest itself might be alleged to be committing a violation. For example, if Qwest were to knowingly enter a wholesale operator services contract that did not provide for rate quotations, and Qwest did not offer quotations to consumers on behalf of the OSP, Qwest might face a complaint that it knowingly engaged in a practice that violates the rule. Responsibility might be urged under provisions of law such as those in RCW 80.04.405, which provide for penalties to one who "procures, aids, or abets in the violation of any . . . rule . . . of the commission . . ." The same might arise if Qwest were alleged to enter a contract for wholesale services with knowledge that it cannot comply with the rule on the OSP's behalf, without advising the OSP that it must obtain an exemption in order to

ORDER

- 17 The Commission declares that when a retail offeror of OSP services uses Qwest wholesale operator services to provide the retail product, the primary responsibility to provide rate information in compliance with WAC 480-120-262(3) rests with the retailer and not with Qwest.

DATED at Olympia, Washington and effective this 15th day of March, 2004

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

NOTICE TO PARTIES: This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-07-870.

maintain compliance. Qwest asks for exemption from the rule as an alternative to a declaratory order; it has not provided the information required by WAC 480-120-015 to demonstrate that an exemption is appropriate in these circumstances.

APPENDIX A

WAC 480-120-262 provides in part:

(3) **Oral disclosure of rates.** This subsection applies to all calls from pay phones or other call aggregator locations, including, but not limited to, prison phones and store-and-forward pay phones or "smart" phones. When a collect call is placed, both the consumer placing the call and the consumer receiving the call must be given the rate quote options required by this section.

(a) **Oral rate disclosure message required.** Before an operator-assisted call from a call aggregator location can be connected by an OSP (whether by a presubscribed or other provider), the OSP must first provide an oral rate disclosure message to the consumer. If the charges to the consumer do not exceed the benchmark rate in (f) of this subsection, the oral rate disclosure message must comply with the requirements of (b) of this subsection. In all other instances, the oral rate disclosure message must comply with the requirements of (c) of this subsection.

(b) **Rate disclosure method when charges do not exceed benchmark.** The oral rate disclosure message must state that the consumer may receive a rate quote and explain the method of obtaining the quote. The method of obtaining the quote may be by pressing a specific key or keys, but no more than two keys, or by staying on the line. If the consumer follows the directions to obtain the rate quote, the OSP must state all rates and charges that will apply if the consumer completes the call.

(c) **Rate disclosure method when rates exceed benchmark.** The oral rate disclosure message must state all rates and charges that will apply if the consumer completes the call.

(d) **Charge must not exceed rate quote.** If the OSP provides a rate quote pursuant to either (b) or (c) of this subsection, the charges to the user must not exceed the quoted rate. If a consumer complains to the commission that the charges exceeded the quoted rate, and the consumer states the exact amount of the quote, there will be a rebuttable presumption that the quote provided by the complaining consumer was the quote received by the consumer at the time the call was placed or accepted.

(e) **Completion of call.** Following the consumer's response to any of the above, the OSP must provide oral information advising that the consumer may complete the call by entering the consumer's calling card number.

(f) **Benchmark rates.** An OSP's charges for a particular call exceed the benchmark rate if the sum of all charges, other than taxes and fees required by law to be assessed directly on the consumer, would exceed, for any duration of the call, the sum of fifty cents multiplied by the duration of the call in minutes plus fifty cents. For example, an OSP's charges would exceed the benchmark rate if any of these conditions were true:

- (i) Charges for a one-minute call exceeded one dollar;
- (ii) Charges for a five-minute call exceeded three dollars; or
- (iii) Charges for a ten-minute call exceeded five dollars and fifty cents.