

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of a Rulemaking to Consider Possible Corrections and Changes in Rules in Chapter 480-07 WAC, Relating to Procedural Rules.

Docket No. A-050802

**QWEST CORPORATION'S
INITIAL COMMENTS**

1 Qwest Corporation (“Qwest”) offers the following comments in response to the Commission’s July 20, 2005 Notice of Opportunity to Comment in conjunction with the proposal to correct and change certain rules in Chapter 480-07 WAC.

I. INTRODUCTION

2 On July 20, 2005, the Commission issued a CR-101 in this docket, as well as a Notice of Opportunity to Comment. Attached to the Notice was a Memorandum listing proposed rule changes. Qwest’s comments herein track the proposed rule changes in the Memorandum. Qwest may have additional comments or suggestions as the docket progresses, and will participate in this proceeding through written comments and attendance at workshops, if scheduled.

II. COMMENTS ON JUNE 30, 2005 MEMORANDUM LISTING PROPOSED CHANGES

A. Part I: General Provisions

WAC 480-07-110-Exceptions and modifications

3 This rule addresses the procedure and basis for requesting exemptions from the rules in Chapter 480-07, or modifications in the application of those rules. The proposed changes include revising subsection (1) to enable other chapters to point to this section with regard to procedures and standards for seeking exemption or modification, and adding a number of other subsections based on (the now revised) WAC 480-120-015, to establish standards and procedures for requesting modification or exemption. Qwest is not opposed to these suggested changes.

WAC 480-07-140-Communicating with the Commission

4 Qwest does not support the proposed changes to subsection (4), which would enable a person communicating with the Commission to provide only a name and e-mail address or facsimile number, as opposed to a mailing address. Qwest believes that the current requirements of the rule (name and mailing address, with other e-mail, phone and facsimile information requested but not required) are not burdensome, and enable the Commission and other parties to have sufficient contact information to fulfill notice or other requirements. The suggested change to subsection (5), regarding formatting of documents, is acceptable, though from an organizational standpoint, the Commission may wish to address formatting of confidential information in the rule on filing confidential information, as well as in this rule.

New WAC 480-07-141 – Docketing conventions

5 Qwest is not opposed to codifying and clarifying the current docketing process, including

issues such as when the original docket number should be used, and when a new one should be assigned. One suggestion addresses the Commission’s ability to “accept” or “reject” a document after filing – Qwest is unsure of how and when this issue might arise, and would be interested in exploring the extent to which problems such as these, necessitating a rulemaking, exist.

New WAC 480-07-142—Filing requirements

6 This is a proposal to include a new rule that provides a roadmap to other rules for various types of filings. Qwest believes that such a rule is redundant and unnecessary. The proposal was also made that the rules should state that “all companies are now strongly encouraged to file electronically all tariffs, time schedules, and price lists, using e-mail attachments, supplemented by one paper copy for Record Center’s files.” However, a rule that simply “encourages” rather than mandates is of no force and effect. The rules should either be amended to require electronic filing, or not, but the draft rule would serve no purpose.

WAC 480-07-160—Confidential information

7 Proposals regarding this rule include clarifying how to mark and highlight confidential information, and a discussion with regard to whether the rule should apply in adjudicative proceedings where a protective order has been entered.

8 Qwest agrees that this rule could benefit from some fine tuning. In addition to the issues noted in the June 30, 2005 memorandum, Qwest would like to discuss ways of meeting the Commission’s needs regarding public information while making the filing process less burdensome to parties. Qwest would also like to discuss the issues that arise when an entire document is claimed to be confidential, such as a settlement agreement, or a purchase and sale agreement related to the transfer of utility property.

New WAC 480-07-190—Definitions

9 This is a proposal to add definitions of “person”, “party”, “docket manager” and “interested person”. Qwest does not oppose defining these terms, but would simply note that “person” and “party” are already defined terms under RCW 34.05.010, and the Commission may wish to consider whether those terms need a definition in this chapter, and if so whether they should be defined in exactly the same way as they are in the APA. Further, “person” is also defined in WAC 480-120-021, and thought should be given to whether the definitions should be the same for all purposes, or whether different definitions are necessary or would cause undue confusion.

B. Part II: Rule-Making Proceedings

10 The issue raised here is whether the Commission should conduct a general inquiry into whether it should maintain or modify rulemaking procedures as typically conducted, or whether rulemaking procedures should be implemented by more detailed rules. Qwest believes that this inquiry is best addressed in a separate rulemaking. Qwest would preliminarily recommend that such a rulemaking consider including explicit statements that the Commission must address the various parties’ positions in the rulemaking process, that there be detailed requirements for summarizing parties’ positions, and that there be detailed requirements for explaining the Commission’s decision process in adopting new rules or modifying existing rules.

C. Part III: Adjudicative Proceedings

WAC 480-07-380(2)(c)

11 The proposal here is that the rule concerning responses to motions for summary determination be revised to read: “unless the commission establishes ~~by order~~ a different specific date”.

This change will allow for schedule changes by notice. Qwest agrees that this change should be made.

WAC 480-07-395 Pleadings, motions, and briefs—Format requirements:

- 12 Several suggestions are made regarding this rule – some are clean-up type suggestions, others are more substantive. Qwest does not object to including additional requirements in the rule to the extent those requirements are already routinely imposed (e.g., oversize holes), but does not believe that cross references to other rules such as 480-07-460 serve any useful purpose, and does not agree that it is appropriate to include matters in the rule that are not routinely required. For example, the ALJ in a proceeding already has the authority to require the parties to organize their briefs using a common outline, but that is not done in all cases – reference to that unduly clutters the rule and does not provide guidance to a party with regard to what the requirement will be in a specific case. Qwest does not generally oppose a requirement regarding the form of citation, or for a table of contents. However, it may be that a table of contents is not necessary in every case, nor is a table of authorities – this matter could be discussed in any workshops scheduled in this proceeding. It may also be helpful to parties if the Commission were to establish a standard form for citation of Commission orders, which could be included in this rule.

WAC 480-07-400—Discovery

- 13 This proposal provides that parties may not seek discovery from Staff until Staff files its response case in a proceeding initiated by complaint or petition. This was formerly included in 480-09-480(5), but was dropped in chapter 480-07 (in favor of it being something parties could request in individual cases, along with other discovery scheduling, as appropriate). There is also the question of whether to consider broadening this exemption to include Public Counsel and Intervenors, as well as to consider broadening this to provide for a “black-out”

period on discovery sought from the utility prior to rebuttal and from all parties prior to and during hearing.

14 Qwest is opposed to a blanket limitation on discovery prior to the filing of a party's response case. This should be left open to be decided on a case by case basis. There are situations where such discovery will be necessary, and there is no compelling reason to create two classes of parties, some who are exempt from discovery for a time, and others who are not. It is unclear what problem, if any, this revision would address. In addition, Qwest believes that "black out" periods are sometimes necessary, but suggests that they may be best handled on a case by case basis.

WAC 480-07-405—Discovery—Data requests, records requisitions, and bench requests

15 The proposal is to add new subsection 6(c) to make clear that any party may object to a Bench Request or to a response to a Bench Request (set a time frame for action), and should provide that in the absence of objection or a Commission rejection, the Bench Request response(s) will be received in evidence. Qwest does not object to this proposal.

WAC 480-07-420—Discovery—Protective Orders

16 The proposals with regard to this rule state that the rule might be clarified to provide that Staff and Public Counsel need only sign one confidentiality form to be privy to both Confidential and Highly Confidential under the Protective Order, and might also make a provision for support staff and whether they need to sign a confidentiality form – alternatively, the standard form protective order could be modified to address these issues and the rule would not be changed.

17 Qwest believes that the rule should not be modified. While Qwest does not necessarily object to the attorneys for Staff and Public Counsel signing a single form, there are issues that arise in

connection with experts for those parties where it may be necessary and appropriate for those witnesses or consultants to specifically agree to the heightened protections afforded highly confidential information. It is unclear what concerns are driving this proposed change, but Qwest believes that those concerns should be articulated in order that they may properly be addressed, and that parties may evaluate whether the proposed solution is best tailored to the problem.

18 Qwest does not object to the issue of support staff being addressed in the standard form protective order. In general, it has been Qwest's practice to have paralegals and others who handle confidential material simply sign a protective order – that process does not seem to be burdensome, and ensures that each party knows exactly who will have access to particular documents. It may be that the Commission could carve out an exception where individuals who simply handle the material (for copying, distribution, etc.) do not have to sign the agreement, and only those people who actually read or review the material should sign. This issue could be further addressed in a workshop.

WAC 480-07-423—Discovery-Protective Orders-Submission requirements for documents

19 The proposal here suggests that the rule be clarified so that parties are directed to file a complete version of the document with confidential material on colored paper and highlighted; it is not acceptable to file a set of confidential sheets for replacement of pages in the redacted version. Qwest has followed the practice of submitting two versions of complete documents, and agrees that this procedure could be codified in rule.

20 There is also a proposal that the rule should state that parties will be informed how many confidential sets and redacted sets they need to file to meet the Commission's internal distribution needs. Qwest does not object to having this set forth in the rule, but the rule

should then be specific as to when and how parties will be so informed, and provide for a default number if no other is specified. It would seem reasonable that parties should only provide one copy of the redacted documents, and the standard number of the confidential documents. This could also be accomplished in the prehearing conference order.

WAC 480-07-460—Hearing-Predistribution of exhibits and prefiled testimony

- 21 This proposal would add a sentence to subsection (1)(b) of the rule regarding revisions to testimony, as follows: “If one or more pages of multiple page testimony or exhibits are revised, the header or footer of the affected pages must be labeled "REVISED" and indicate the date of the revision.” This change is acceptable to Qwest.
- 22 Proposals are also made to revise subsection (2)(b) to require that every page of an exhibit bears the premark (e.g., Exhibit No. ___(JQW-1T)) rather than just the first page, and to revise subsection (2)(d) to include the “oversize hole” requirement; include font requirements; and include a requirement for tabs separating all prefiled exhibits (i.e., direct and cross). Qwest believes that these requirements should be discussed at a workshop. Some of these proposals seem acceptable, while others might be unduly burdensome or unnecessary in some cases.

WAC 480-07-470(11) [concerning “subject to check” practice in cross-examination]

- 23 Recommendations are made regarding the “subject to check” questions in cross-examination. Qwest does not object to changing the rule so that the deadline for confirmation of subject to checks flow from the date of the receipt of the transcript, not from the date the testimony occurs. Qwest recommends that parties asking “subject to check” questions should be prepared to provide details on the “subject to check” process and the timeframe the witness has for response, as well as be required to provide the witness with information necessary to perform the check.

WAC 480-07-510 and -520 general rate filings

24 Qwest believes that it would be beneficial to discuss all of the proposed changes in a workshop.

WAC 480-07-620 – Emergency adjudicative proceedings.

25 The proposal with regard to this rule is to add language as follows: “If time permits the preparation of a complaint, it shall be served upon the respondent by whatever means may best provide actual notice of the adjudication. If a majority of the Commissioners are not available to authorize a complaint, it may be authorized by one commissioner or, if no commissioner is available, by the Secretary of the Commission or the senior available administrative law judge.” Qwest would recommend that this change also be discussed at a workshop.

WAC 480-07-650—Petitions for enforcement of telecommunications company interconnection agreements.

26 The changes proposed to this rule are acceptable to Qwest as they appear to simply be language changes to make the rule internally consistent (i.e., the process is started by “petition”, not “complaint”).

WAC 480-07-730—Settlement

27 The questions posed are: (1) Should we do away with the term “multi-party settlement” and use “stipulation” instead? [*Some argue it isn’t really a settlement if all do not agree*]. (2) Should we modify procedures for consideration of comprehensive stipulations that are supported by some, but not all parties?

28 Qwest believes that the term “multi-party settlement” is well-understood and need not be changed. A settlement is not a stipulation, and a settlement agreement between some parties

remains a settlement agreement, even if opposed by some parties. Qwest also believes that it is unnecessary to modify the procedures for the consideration of settlements that are not joined by all parties. This matter was discussed at some length at the Bench/Bar Conference on July 22, 2005, and Qwest expressed its views at that time, and is prepared to further discuss this issue at a workshop if necessary.

WAC 480-07-750(2)(a)

29 The current rule states that "If the commission rejects a proposed settlement, the litigation returns to its status at the time the settlement was offered and the time for completion of the hearing will be extended by the elapsed time for consideration of the settlement." The proposal is to consider amending this to add the concept that the extension will also take into account other pending business. Qwest agrees that additional time may be necessary, but does not agree that it should be unbounded.

WAC 480-07-883

30 This proposal recommends that the rule be amended to clarify that compliance filings, including tariff sheets, should require an original on paper for the docket file in Records Center, but otherwise can be submitted electronically. Qwest supports this proposal.

Other Proposals

31 Consider adding rule(s) concerning hearing transcripts: One suggestion is to add a rule providing that parties may make motions to correct hearing transcripts, but providing that readily identified typographical errors need not be corrected. Qwest is not certain that such a rule is necessary – parties are currently permitted to file motions, and it is not necessary to specifically define or enumerate each type of motion that might exist.

32 Consider adding a rule to require parties to submit proposed redacted versions of transcripts that include confidential information rather than maintaining confidential treatment of entire segments of transcripts. Qwest is opposed to this proposal. It is already highly burdensome to redact confidential testimony and exhibits, and no purpose would be served by extending this burden to transcripts. A transcript is either public or confidential, depending upon whether the testimony was transcribed in a public hearing or in a closed session. If such sessions are appropriately designated, the transcript would follow that designation. No purpose would be served by trying to redact words or phrases from a confidential transcript.

III. CONCLUSION

33 Qwest appreciates the opportunity to comment at this stage of the rulemaking. Qwest will continue to participate in this proceeding, and may have additional comments in response to proposals made by other participants.

Respectfully submitted this 26th day of August, 2005.

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